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**24**

**PART TWO**

# PART TWO

## OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

#### A. General observations and information concerning certain countries

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

**The Employer members** pointed out that constitutional obligations to submit reports were the fundamental basis for the functioning of the ILO supervisory mechanism. The current lessening of compliance with these obligations would put in doubt the whole supervisory system. They expected that member States would comply with their obligations resulting from ratified Conventions but they doubted this, in view of the fact that governments did not even comply with their procedural obligations. They indicated that there were an alarming number of cases of non-compliance. Only 25 per cent of governments concerned supplied reports in time, which meant that three-quarters of the governments did not meet these obligations. They stressed that the term "automatic cases" did not exactly express the importance of these procedural obligations. Moreover, discussions on the improvement of working methods would in no way reduce the importance of these cases as a considerable deterioration could be noted over the last few years. The public examination within this Committee of the cases of non-compliance with these obligations was important and necessary to avoid rewarding governments concerned for their failures. The reproach that these discussions on non-compliance by the member States were non-substantial was primarily due to the unconvincing statements made by the governments concerned. Finally, they urged the governments to comply with their procedural obligations in the future.

**The Worker members** underlined that respect for the obligation to supply reports was a key element of the supervisory system of the ILO. The information contained in the reports had to be as detailed as possible. There remained 13 countries on the list of countries that had not fulfilled this obligation. These countries had an unjustified advantage in the sense that the absence of the report made it impossible for the Committee to examine the national law and practice in respect to ratified Conventions. Consequently, they considered that the Committee had to insist that these States took the necessary measures to respect this obligation in the future.

**A Government representative of Denmark** stated that the Government of Denmark deeply regretted that the Faeroe Islands had yet again not provided the requested reports and answers to the comments of the Committee of Experts which meant that it was the status quo. He indicated that the Danish Government had in the past year again urged the Faeroe Island authorities to comply with their reporting obligations but without result. He reminded the Committee that the Faeroe Islands had complete autonomy in the area of social security. He stated that this year, however, he was happy to report some progress in that the Faeroe Islands had responded positively to the proposal to receive assistance from the ILO in order to improve their reporting obligations. He indicated that the Danish Government was now engaged in discussions with the ILO on how to take action on this matter, in collaboration with the relevant Danish and Faeroe Island authorities. The Danish Government considered this to be a step forward. He hoped that this would convince the Committee that the Danish Government was doing its utmost to remedy the situation, even if this would take time.

**A Government representative of Equatorial Guinea** regretted that up to now his Government had not been able to comply with the obligation to submit reports under article 22 of the ILO Constitution. He explained that the problem had its origins in the fact that it was impossible to consult employers' and workers' organizations, as they had not yet been established. Finally, he requested technical assistance in the preparation of these reports.

**A Government representative of Sierra Leone** explained that his country was just emerging from a civil war that had lasted a number of years. This had not permitted his Government to meet its constitutional obligations of sending reports on the application of ratified Conventions. He promised that his Government will do its best in the future to meet its obligations in this respect.

**The Worker members** observed that only a few countries had replied among those invited to provide reasons for failing to comply with their reporting obligation; the other countries were either absent or non-accredited to the Conference. Some countries had raised several elements to justify their failure; others had taken up a commitment that should be acknowledged. The Committee should continue to insist that member States take all measures in order to respect this obligation. The need to reinforce the supervisory system remained theoretical if governments did not respect their obligation to supply reports on ratified Conventions. Governments should be reminded that they could also ask the ILO for technical assistance.

**The Employer members** indicated that they had listened to the statements of the governments that had provided information on the reasons for their non-compliance with their reporting obligation. They noted that a number of governments concerned had not made comments, or were not present, or even more regretfully, they were probably present at the discussions without signalling their presence, as experience had shown during the last few years. With reference to the statement of the Government representative of Guinea concerning the difficulties in having tripartite consultations, they mentioned that tripartite consultations were always welcome. However, the final obligation to submit reports lay with the governments. A non-existing or a badly functioning tripartite consultation process at the national level should not justify the failure to submit the requested reports on time by governments. They suggested that the failure to meet with these obligations should be specially highlighted in an appropriate part of the Committee's report.

**The Committee noted the information supplied and the explanations given by the Government representatives. The Committee recalled the fundamental importance of supplying reports on the application of ratified Conventions and of doing so within the prescribed time limits. As this obligation constituted the very foundation of the supervisory mechanism, the Committee expressed the firm hope that the Governments of Afghanistan, Armenia, Denmark (Faeroe Islands), Equatorial Guinea, Kyrgyzstan, Liberia, Sierra Leone, Solomon Islands, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan, that until now had not supplied a report on the application of ratified Conventions, would do this as soon as possible. The Committee decided to mention these cases in the appropriate section of its General Report.**

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

**The Employer members** recalled how they had repeatedly underlined the importance of supplying first reports on the application of ratified Conventions. The supervision of voluntarily accepted

international obligations started with these reports. The purpose of these reports was to identify and highlight problems in the practical application of ratified Conventions and to clarify provisions of Conventions for the governments concerned. Recommendations and assistance by the Office were only possible after the examination of these first reports. It should not be difficult to meet these obligations after the ratification of Conventions because member States ratified them following appropriate prior examination of these Conventions and their respective national law and practice. The examination needed to prepare first reports was precisely the same.They pointed out that recent changes to the reporting obligation had resulted in a full second "first report" not being any more necessary. This reduced considerably the work for governments. It was therefore even more regrettable that many governments had not supplied first reports that were due.

**The Worker members** emphasized that first reports on the application of ratified Conventions assumed a particular importance since they provide the basis upon which the Committee of Experts could base a first evaluation of the application of a Convention by a State. Furthermore, these first reports allowed countries to avoid, from the beginning, errors of interpretation on the application of the Conventions. Sending first reports constituted an indispensable part of the supervisory system. The 16 member States cited should be requested to make a special effort to fulfil their obligation to provide first reports on the application of ratified Conventions.

**A Government representative of Equatorial Guinea**, referring to his previous intervention, indicated that there was a gulf between Europe and Africa and that the preparation of a first report was not easy for countries like his. He did acknowledge the obligation to comply with this requirement and said that this would be done with the technical assistance of the ILO.

**A Government representative of Chad,** (Minister of the Public Service, Labour and Employment) said that it had never been his Government's intention to not comply with its treaty obligations, but that an unfortunate combination of circumstances had delayed the transmission of certain reports within the required time limits. With regard to Convention No. 151, he indicated that his Government had already submitted its first report.

**A Government representative of Cambodia** informed the Committee that due to the human resources situation within the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY), it could not provide the reports on the applications of Conventions Nos. 100, 105, 111 and 150. However, the first report on the application of Convention No. 100 had been submitted to the Director-General of the ILO on 3 June 2003 in Geneva. He indicated that MOSALVY was preparing the reports on the other three Conventions but needed technical assistance from the Office.

**The Employer members** noted with regret that many governments that had not submitted their first reports and that were thus the subject of discussions, were not even present at the Committee, nor did they provide comments on their non-compliance. They noted that some cases of non-compliance dated back to the beginning of the 1990s. They considered these to be very serious cases and almost without any hope for improvement. They stressed once again the importance of meeting the reporting obligations and they requested that these cases be highlighted in the appropriate part of the General Report of the Committee.

**The Worker members** observed that only seven or eight countries had provided information to this Committee on their failure to supply a first report. Often the same reasons were invoked to justify these failures. It was unacceptable that some first reports were due since 1992. This was a serious matter, and if a government was faced with particular difficulties, it should inform the Office as soon as possible in order to obtain the necessary assistance – which had, moreover, been requested by some Government representatives. The Office should be in contact with each member State concerned, in order to determine the reasons why the required information was not communicated.

**The Committee took note of the information and the explanations provided by the Government representatives. The Committee reiterated the crucial importance of submitting first reports on the application of ratified Conventions. The Committee decided to mention the following cases in the appropriate section of the General Report: since 1992 – Liberia (Convention No. 133); since 1995 – Armenia (Convention No. 111), Kyrgyzstan (Convention No. 133); since 1996 – Armenia (Conventions Nos. 100, 122, 135, 151), Uzbekistan (Conventions Nos. 47, 52, 103, 122); since 1998 – Armenia (Convention No. 174), Equatorial Guinea (Conventions Nos. 68, 92), Uzbekistan (Conventions Nos. 29, 100); since 1999 – Turkmenistan (Conventions Nos. 29, 87, 98, 100, 105, 111), Uzbekistan (Conventions Nos. 98, 105, 111, 135, 154); since 2000 – Chad (Convention No. 151); and since 2001 – Armenia (Convention No. 176), Belize (Conventions Nos. 135, 140, 141, 151, 154, 155, 156), Cambodia (Conventions Nos. 105, 111, 150), Cape Verde (Convention No. 87), Congo (Conventions Nos. 81, 98, 100, 105, 111, 138, 144), Kyrgyzstan (Convention No. 105), Tajikistan (Convention No. 105) and Zambia (Convention No. 176).**

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

**The Worker members** emphasized that incomplete reports or late reports hampered the work of the Conference Committee as well as that of the Committee of Experts. The comments formulated by the latter had to be taken seriously and countries had to fulfil this obligation. The Committee of Experts indicated that in 379 cases concerning 42 countries, governments did not respond to comments. This attitude was unacceptable.

**The Employer members** supported the statement made by Worker members of the Committee. The number of governments that failed to supply information in reply to comments made by the CEACR was alarmingly high. Forty-two member States, almost a quarter of all the member States of the ILO, did not submit a formal reply or respond in substance to the comments of the CEACR. The supervisory system was based on a dialogue between the supervisory bodies and member States and workers' and employers' organizations. The non-compliance with obligations that could make this dialogue possible risked inflicting irreparable damage on the supervisory system.

**A Government representative of Cambodia** reiterated his earlier statement on the human resources situation within the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) and on the lack of qualified personnel to deal with ILO matters. He informed the Committee of the intention of MOSALVY to prepare, as soon as possible, a report that would take into account the comments made by the Committee of Experts, and requested ILO technical assistance to build the capacity of the staff.

**A Government representative of Chad** (Minister of the Public Service, Labour and Employment) indicated that his Government had already submitted reports on Conventions Nos. 26, 29, 87, 100, 111, 135 and 144 and that he was ready to provide the Committee with any information considered necessary in this respect.

**A Government representative of Denmark** indicated that the criticism concerning the Faeroe Islands was closely linked to and indeed inseparable from the previous comments on failure to supply reports on ratified Conventions. He wished to limit his remarks to those made earlier in relation to paragraph 89 of the Committee's report concerning the Faeroe Islands.

**A Government representative of Djibouti** indicated that his country had ratified together a large number of Conventions. Yet, the majority of these Conventions were not relevant to Djibouti where commercial fishing was declining, and the country was not one of agriculture or mining. This was the reason why it had started the process of denunciation of some of these Conventions. There existed, moreover, a transmission problem with regard to the comments of the Committee of Experts. In fact, these have been sent to the Office of the Minister of Foreign Affairs, which took time to transmit them to the competent services of the Ministry of Labour.

**A Government representative of Ethiopia** stated that her Government regretted the failure to comply with its reporting obligations. The delays were not deliberate and were essentially the result of the lack of technical capacity of their staff that handle ILO reporting obligations. In this particular instance however, technical assistance had been provided by the ILO, for which she wished to thank the ILO subregional office in Addis Ababa. She wished to express her Government's continuing concern about the need to improve their technical capacity in this respect and would be seeking increased technical assistance from the ILO to this end. Another important factor that had delayed the supply of reports to the ILO was the increased workload resulting from the ongoing labour law amendment activity in her country, which had required much of their time and resources. As this amendment process had now reached its final stages, she assured the Committee that the said replies will be provided as soon as possible.

**A Government representative of France** indicated that New Caledonia had the exclusive authority in matters of labour law. As such, the central (metropolitan) administration of the ministries were not involved in the drafting of reports or responses addressed to the Committee of Experts. Within this special institutional framework, the services of the Government of New Caledonia had been requested on several occasions to send these reports and responses; however, not all the obligations could be fulfilled. This situation was regrettable and the Government was preparing an ad hoc mission to remedy this.

**A Government representative of Guinea** indicated that his Government had taken note of the comments of the Committee of Experts and that all efforts would be made to supply the appropriate information. Guinea welcomed the designation of a standards spe-

cialist in the ILO subregional office for the Sahel in Dakar. His presence should help Guinea to overcome the technical difficulties related to the application of standards.

**A Government representative of Equatorial Guinea** said that his Government assumed responsibility for the failure to comply with this obligation and expressed the hope that the reports in question would be sent in the near future.

**A Government representative of Latvia** explained that reports under article 22 of the ILO Constitution that were due in 2002 were prepared and adopted in the National Tripartite Cooperation Council, but that they had not been submitted due to difficulties in preparing translations into English. He indicated that these reports will be submitted together with the reports due this year.

**A Government representative of the Libyan Arab Jamahiriya** stated that the Libyan Arab Jamahiriya was fully meeting its obligations for sending reports and replies to the comments of the Committee of Experts on ratified Conventions up to 2002, that were prepared by the national technical committee. Unfortunately, there had been delays subsequently in sending reports and replies to the comments of the Committee of Experts, including on Conventions Nos. 95, 122, 131 and 138. This was because of a new Law on Labour Relations that was submitted to the Peoples' Congress. Later there was a delay in convening a meeting of the General Peoples' Conference, which was to examine this draft law. He hoped that the new draft law will be promulgated soon, as it had been prepared by taking due account of relevant ILO Conventions. He reiterated his Government's commitment to meeting its obligations in the shortest time possible. He added that his Government had requested and was awaiting a reply from the ILO on technical assistance in training the young officials who had lately joined their department to deal with international labour standards.

**A Government representative of Malaysia** indicated that unfortunately, as the comments of the Committee of Experts had not been received by his Government, it could not reply to them. He requested that these comments be forwarded so that the Government could provide the necessary responses after the end of this session of the Conference.

**A Government representative of Niger** indicated that his Government had to respond to the comments formulated by the Committee of Experts for Conventions Nos. 29, 87, 95 and 131. Concerning Convention No. 29, the report could not be transmitted because the competent services were not in a position to collect all the information requested by the Committee of Experts. He indicated that the Minister would take all the necessary measures to transmit this information as soon as possible. With regard to Convention No. 87, following the comments of the Committee of Experts and following certain claims made by the central unions, days for discussions were organized, with the support of the Office, in September 2002, on the problems of the right to strike and trade union representation. This had led to the adoption of recommendations, and a committee for follow-up had been set up. Finally, concerning Conventions Nos. 95 and 131 on the protection of wages, the regulatory part of the Labour Code had been drafted and submitted to the Advisory Committee on Labour for advice. The draft text was currently with the Secretary-General of the Government for examination and, eventually, for adoption by the Council of Ministers.

**A representative of the Secretary-General** read out a statement by **the Government of Papua New Guinea**, which noted the comments of the Committee of Experts that indicated that the failure by governments to fulfil their obligations considerably hindered the work of the Committee. The Government of Papua New Guinea gave its assurance that it had no intention to disregard its reporting obligations and that considering its capacity and time constraints, it was trying its best to meet those obligations. It apologized and reassured the Committee that it would submit the requested responses, together with the first reports on the ratification of the fundamental Conventions, before September 2003.

**A Government representative of Paraguay** regretted the delay in providing the information requested by the Committee and noted with interest and special attention the Committee's comments and observations on Conventions in the General Report. He added that he would provide the information and replies requested to the Committee in writing.

**A Government representative of the United Kingdom** indicated that she was responding concerning both Gibraltar and Montserrat. The United Kingdom Government apologized that the territories had not met the timetable for responding to the comments of the Committee of Experts. As her Government had indicated on previous occasions, such delays did not stem from any lack of effort on the part of her Government which went to great lengths to try to ensure that all their non-metropolitan territories met their reporting obligations in full and within the ILO timetable. She indicated that this year the number of reports produced by their non-metropolitan territories had been the highest for a number of years and they saw this as an achievement, particularly given the administrative burden that the reporting process could place on small territories. She considered it difficult to see what more they could do in terms of extracting reports from what were largely autonomous administrations. This was no excuse for the delays which her Government regretted. She assured the Committee that the territories were fully aware of their reporting responsibilities and had been asked to look at the issues raised by the Committee of Experts with a view to an early response.

**A Government representative of Sierra Leone** reiterated his earlier explanations that his country was just emerging from a civil war which had not permitted his Government to meet its constitutional obligations. He appealed to the Office for technical assistance to enable his Government to meet its reporting obligations.

**A Government representative of Viet Nam** stated that his Government had duly completed the reports to the Committee of Experts. He indicated that it must have been due to some technical problems that these reports had not reached the Committee in time. His delegation regretted this situation and it will certainly look into the issue to rectify the problem.

**The Employer members** repeated their regret that representatives of governments concerned that were aware of the invitation by the Committee to provide information on their non-compliance, had not chosen to be present. The great number of such cases demonstrated the gravity of the problem and the non-existence of dialogue. They recalled that member States were responsible for their non-metropolitan territories in this regard. Referring to the statement of the representative of the Government of Latvia, they remarked that professionals from Latvia had often shown their proficiency in English but that this appeared not to be the case with the responsible officials who prepared reports for the Office.

**The Worker members** observed that governments had put forward the same arguments as in previous years to explain the reasons why they had not replied to the comments of the Committee of Experts. Many other governments did not give reasons for this failure, despite the opportunity offered to them. Taking into account the importance of the obligation to supply reports, it was necessary for this Committee to insist that governments take all necessary measures in order to respond to the comments of the Committee of Experts within the time limits set. In addition, certain countries that did not fulfil their obligations had or should have at their disposal, the necessary technical capacities to this end.

**The Committee took note of the information and explanations given by the Government representatives who appeared before it. It insisted on the vital importance of the continuation of dialogue, and of the communication of clear and full information in reply to the comments of the Committee of Experts. The Committee recalled that this was part of the constitutional obligation to supply reports. In this respect, it expressed its deep concern over the very high number of cases of failure to supply information in response to the Committee of Experts. It recalled that governments could ask the ILO for assistance in order to overcome any difficulties they might face. The Committee urged the governments concerned, namely, Afghanistan, Azerbaijan, Cambodia, Cape Verde, Chad, Comoros, Congo, Denmark (Faeroe Islands), Djibouti, Equatorial Guinea, Ethiopia, France (New Caledonia), Guinea, Haiti, Iraq, Kyrgyzstan, Latvia, Liberia, Libyan Arab Jamahiriya, Malaysia, Niger, Papua New Guinea, Paraguay, Sao Tome and Principe, Sierra Leone, Solomon Islands, Tajikistan, Uganda, United Kingdom (Gibraltar, Montserrat), Viet Nam and Zambia, to do everything in order to provide the requested information as soon as possible. The Committee decided to mention these cases in the corresponding section of the General Report.**

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

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

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

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

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

**Fiji**. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 144 and 169.

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

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

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

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

**Mongolia**. Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions, as well as replies to most of the Committee's comments. The Government has also sent the first reports on Conventions Nos. 135, 144, 155 and 159.

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

**Slovenia**. Since the meeting of the Committee of Experts, the Government has sent the first report on Convention No. 147.

**United Republic of Tanzania**. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

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

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

**Convention No. 29: Forced Labour, 1930**

***India*** (ratification: 1954). **A Government representative** began by presenting the members of the high-level delegation accompanying him from the Ministry of Labour, which served to show how seriously his Government took its relations with the ILO. He therefore hoped that all the members of the Committee would appreciate the effort and courtesy of the Government in going to such great lengths to explain the situation prevailing in the country and the measures adopted by his country to address the issues under discussion. In particular, he hoped that the Committee would discuss the case in a constructive and appreciative manner on the basis that all of its members were equal and that all speakers would refrain from using any of the unparliamentary and indecorous language which had been heard in the discussion of certain other cases. After drawing a distinction between the work of the Conference Committee and that of the Committee of Experts, he indicated that he would review, paragraph by paragraph, the comments made by the Committee of Experts regarding the application of the Convention by India. Finally, he would address a number of procedural issues relating to the work of the Conference Committee.

On the subject of bonded labour, he recalled that Article 2 of the Convention defined forced labour as "work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". In this respect, he emphasized that for his country even one case of bonded labour was one case too many. He reaffirmed that the Government took very seriously its responsibilities and obligations towards the ILO and under the national Constitution, which explicitly prohibited forced or bonded labour. He recalled that bonded labour had its roots in the two centuries when India had not been free and when, because of the anti-farmer policies pursued, it had suffered from famines regularly every ten years. He was therefore proud that India had managed to move from a situation of recurring famine to that of a country which exported its surplus of agricultural produce mainly as a result of the poverty alleviation policies that it had applied. Cases of bonded labour tended to concern the section of the population which had been most deprived in this context. He added that India had since moved on to become the largest democracy in the world, with a population of 1 billion, 450 million workers and 600 million voters.

Turning to the comments made by the Committee of Experts, he noted that in paragraph 2 of its observation it had expressed the hope that the Government would supply its comments on observations made by certain workers' organizations. He indicated in this respect that a detailed answer had already been supplied and that further information would be provided shortly.

He expressed appreciation that the Committee of Experts had taken note of the positive steps taken by the Government to combat the problems under discussion. In paragraph 7 of its comments, the Committee of Experts had welcomed the increase in the rehabilitation grant from Rs.10,000 to Rs.20,000 for each released bonded labourer. In paragraph 4 it had noted that surveys on bonded labour were being conducted in a total of 57 districts. He informed the Committee in this respect that this number had now increased to 120 districts over the short span of time since the publication of the report of the Committee of Experts. In paragraph 7 of its observation, the Committee of Experts had also welcomed other positive steps taken by the Government, including field visits by senior officials to monitor the utilization of funds for the rehabilitation of bonded labour, the regular reviews by vigilance committees and the efforts made by the National Human Rights Commission to oversee the implementation of the Bonded Labour System (Abolition) Act, 1976, on the instructions of the Supreme Court of India.

With regard to child labour, paragraph 12 of the observation of the Committee of Experts also listed all the positive steps taken by the Government, in particular: the identification of 130,210 children as being employed in hazardous occupations and 392,139 children in non-hazardous occupations; the establishment of child labour rehabilitation and welfare funds at the district level by the state governments concerned; the action taken for the collection of compensation; the penal action initiated against the employers of children; the six new processes added to the Schedule of the Child Labour (Prohibition and Regulation) Act, 1986, under the hazardous category; and the implementation of the National Child Labour Projects, which were being monitored regularly, so that children could be taken out of work and put into school. He indicated that the Government had allocated 2.5 billion rupees in the 9th Plan and had provided over 6 billion in the 10th National Development Plan on action to help these children.

With regard to the issue of prostitution, mentioned in paragraph 16 of the observation, he said that India was proud of its record, since the national legislation established higher standards than those required by the Convention. Here too, the Committee of Experts had listed the positive measures taken by the Government, including the national plan of action (1998) to combat trafficking and commercial sexual exploitation of women and children, the constitution of advisory committees at the national and state levels in order to combat trafficking at the grass-roots level, the establishment of protective homes for girls and women, the ratification of the International Protocol to prevent, suppress and punish trafficking in persons and the signing of the SAARC Convention on combating trafficking and commercial sexual exploitation of women and children.

However, in view of all the positive steps and progress noted by the Committee of Experts, he expressed surprise at the conclusions that it had reached. The Committee of Experts had raised three points. First, it had noted in paragraph 5 that accurate data was a vital step in both the development of the most effective systems to combat bonded labour and in providing a true base for assessing the effectiveness of those systems. He regretted that this was no more than a self-evident truism. The real issue was whether reliance should be placed on statistics collected in a transparent manner and provided by a democratic country, or on those compiled by some other less reliable forum. He further pointed out that, while the Committee of Experts had noted with interest in paragraph 8 of its observation the information provided by the Government, it had also expressed the opinion that more than 25 years after the adoption of the Bonded Labour System (Abolition) Act, 1976, the system of bonded labour still existed in the country and that the Government's efforts to eradicate it should be pursued with vigour. While he fully endorsed the second part of this comment, he noted that as a fully democratic Government, India hardly needed any external stimulus to increase its efforts to eradicate the system of bonded labour. As to the first part of the comment, he admitted that some cases of bonded labour did exist in India, just as cases of racism continued to exist in many countries despite the fact that the Universal Declaration of Human Rights had been adopted 50 years ago. He explained that this was because bonded labour was rooted in the issue of socio-economic development and the need to alleviate poverty. Moreover, he indicated that bonded labour was a dynamic concept, which could occur and reoccur, with persons who were freed from bonded labour sometimes returning to it some time later. Moreover, he said that the case of bonded labour was different from that of forced labour. The Indian judiciary, which was socially very proactive, had interpreted the concept of bonded labour rather widely by referring to situations where work was provided for remuneration that was below the level of the minimum wage. Perhaps the real problem in this regard lay in the failure to recognize the distinction between bonded labour and contract labour. He concluded that, rather than the fanciful statistics put forward by some associations, the most important aspect in this respect was the very significant success achieved by the Government through its policy measures in reducing to 26 per cent the numbers of people in the country living below the poverty line. The Committee of Experts had also indicated in paragraph 13 of its observation, with reference to the positive steps taken by the Government, that it noted the Government's commitment to eliminating child labour, as expressed by the Government representative during the discussion at the 2001 Conference Committee, and that it hoped that the Government would pursue its efforts in this field, particularly as regards the identification of working children and the strengthening of the law enforcement machinery. He said that he found this comment unnecessary because the will to move forward came from within the Government itself. While very ready to accept constructive advice on this subject, he objected to the allegations made by certain groups that the Government's statistics were not accurate. These groups had advanced illusory figures concerning millions of persons (between 5 and 20 million bonded labourers, and up to 100 million child labourers). He emphasized in this connection that in an advanced democracy, with a proactive judiciary, a free press and a public litigation system, it would be impossible for a situation of this nature to exist without the Government being brought down. He added that the current system established an incentive structure whereby certain groups of persons were paid in order to identify, sensitize and rehabilitate bonded labourers. It was probable that

such groups took advantage of the system by making unsubstantiated allegations. He recalled that under the Indian judicial system, the accuracy of the figures on forced and bonded labour had to be attested by affidavits. Rather than having recourse to the irresponsible practice of publicizing estimates without any firm methodological basis, he called on the groups concerned also to file affidavits with the Supreme Court of India so that independent inquiries could be made into their allegations. He deeply regretted that the Committee of Experts had placed on an equal footing the facts presented by a sovereign Government and the allegations made by such groups, without any indication as to the methodology used or the reliability of the estimates advanced. The lack of any information on methodology was particularly serious in view of the fact that the resources and infrastructure required to conduct a serious survey of millions of people throughout such a vast country as India were immense. Any exercise of such a magnitude would not have gone unnoticed.

With regard to the issue of prostitution, he noted that the Committee of Experts welcomed the positive steps taken by the Government and its commitment to address the problem. But it then went on to say that, although there were a number of studies and reports on commercial sexual exploitation of women and children, there were no reliable estimates of the extent and magnitude of trafficking and commercial sexual exploitation in India. He was puzzled to note that this was the third occasion on which the Committee of Experts had referred to the need for reliable statistics after having welcomed the positive steps taken by the Government. He suggested that the Committee of Experts should perhaps adopt a more pragmatic approach which took into account the practical reality that, where statistics were not complete, it was necessary to proceed on a best endeavour basis and to allocate the resources available in order to do what was possible. In addition to the comments made by the Committee of Experts on the need for statistical information, which could only be classified as a truism, and on the continuing existence of bonded labour, with which he of course agreed, but considered that such situations existed even in advanced economies, he also expressed surprise at the question addressed to the Government as to why there had been no more convictions of those responsible for violating the respective provisions of the law. While a Government should be expected to provide information based on the number of prosecutions made, he was sure that the Committee of Experts, which was composed of eminent jurists, had no real intention of seeking statistics that would prejudge the impartiality of judicial rulings as to whether or not those charged were guilty. He emphasized that the Government's responsibility was to take cases to trial, but that conviction depended upon the independent judiciary on whether the case required an acquittal or a conviction, which only the independent judiciary could determine.

Turning to the second part of his statement, he drew the attention of the Conference Committee to the fact that of the 175 member States of the ILO whose national law and practice was examined in the report of the Committee of Experts, only 25 cases had been selected for discussion by the Conference Committee. Moreover, of those 25 countries, all but one were developing countries. India did not object to its national situation being discussed in human rights bodies, but it was odd, to say the least, that its name had been included on the list of cases this year after all the positive steps that had been noted by the Committee of Experts. Coming from a democratic and federal country, he considered that if the wildest of the allegations referred to in the report of the Committee of Experts were true, no democratic regime would have survived. Perhaps the standards used by those making the allegations were not the ones contained in Convention No. 29. Perhaps the figures really covered persons who were living below the poverty line. He warned that the human tendency to feel superior or more knowledgeable than others should be circumscribed, that the real facts should not be ignored and that care should be taken not to trust in the preconceived ideas of groups which might be motivated by other interests. The Committee would do well to confine itself to the matters directly covered by the Convention.

He added that when the Indian Secretary of Labour had addressed the Committee in 2001, the conclusions adopted had not reflected any of the information that he had provided. Indeed, the conclusions had been adopted immediately after he had finished his statement, without any time being taken to reflect on the content of the discussion. The issue at stake before the Conference Committee was not the comments of the Committee of Experts on the application of the Convention by India. He welcomed these comments, which spoke for themselves, since the Committee of Experts had commended the steps taken by the Government. His primary aim in coming to the Conference Committee had been to determine whether its action was credible and why some countries were included on the list of cases and others were not. He said that although an external stimulus was useful for closed regimes, his country was a well-established democracy and did not need a lecture on human rights. The real question was whether the individuals making allegations against his country had any *locus standi* and whether their allegations and statistical evidence had been subjected to methodological and objective scrutiny.

He therefore requested the Conference Committee and the Committee of Experts to reflect upon how to improve the system. His country was happy for any deficiencies to be pointed out and to take on board suggestions so as to improve its domestic system, but it was also a strong advocate of equity and non-discrimination. His Government considered that allegations emanating from small groups outside the country and which lacked cultural sensitivity should not be accepted without close verification. He hoped that his presence in person would help to drive home the point that the time had come to speak openly about the comments made, the manner in which they were formulated, and the way in which governments fulfilled their responsibilities towards their citizens.

**The Employer members** thanked the Government representative for his exhaustive statement, although they expressed doubt that much new information had been provided. They recalled that this case had been examined by the Conference Committee on ten occasions since 1986, and had been addressed even more frequently in the report of the Committee of Experts. They emphasized that the extent of the problems involved justified this continued attention and recalled the fundamental importance of Convention No. 29, which had achieved the highest rate of ratification of all ILO Conventions. It was no exaggeration to say that the problem was centennial and had important historical origins.

They noted that the Government representative had expressed doubts concerning the statistics mentioned in the report of the Committee of Experts, which had been compiled by non-governmental organizations. However, focusing on figures tended to obscure the important point that even a single case of bonded or forced labour was one too many. In this respect, even the statistics provided by the Government showed that the problem was very serious. Moreover, they noted the statement by the Government representative that accurate statistics were difficult to compile, particularly in view of the different levels of commitment by the various states. The Government representative had indicated that a new effort had been made in this connection, but that some districts were particularly sensitive and that the compilation of data raised social and psychological problems. On this subject, the Employer members concluded that it was necessary to make an intensive effort to compile reliable data as a basis for all further action. The action required risked being badly planned and achieving weak results without an accurate identification of the persons affected and of the extent of the problem.

The Employer members noted the positive developments mentioned by the Government representative, and particularly the rise in the numbers of vigilance committees and the increased level of payments for the release of bonded workers. However, the question remained as to whether, a quarter of a century after the adoption of the main legislation on this subject, more progress should not have been achieved. For example, almost no figures were available concerning the measures taken to charge and punish those responsible for exacting bonded labour. In the biggest democracy in the world, there was a need for an efficient judiciary to ensure that violations of the law were punished.

Turning to the issue of child labour, they regretted to note that once again the situation was not positive. Although the available statistics differed, the Government had indicated that there were 11 million children working in 1991, including in hazardous work, based on the figures of the 1991 census. The results of the 2001 census were not yet available. In comparison with these figures, the results of the action taken to identify children working in hazardous and non-hazardous occupations, as contained in the report of the Committee of Experts, appeared to be very low. It was therefore to be welcomed that the IPEC programme in the country was implementing 160 action programmes covering over 90,000 children, with a view to removing them from work and providing them with education. Although the problem of child labour undoubtedly had historical roots, they agreed with the Government representative that its cause today was the persistent poverty in the country.

With regard to prostitution and sexual exploitation, they noted that the Committee of Experts had welcomed the action taken by the Government and they supported the call made by the Committee of Experts for these efforts to be continued and for the Government to report regularly on their results.

The Employer members indicated that the fact that the issues under discussion had already been examined on so many occasions appeared to result in a feeling of resignation among the members of the Committee. Nevertheless, they expressed the hope that more

intensive action would be taken on these matters, but agreed that there was no panacea which could solve these problems in the short term. Their causes were too complex and the country and its population too large for action to be effective immediately. One of the causes was undoubtedly the division in the country between the small formal economy and the very large informal sector. They nevertheless urged the Government to intensify its efforts and to overcome the shortcomings noted in the compilation of statistics. It was only when the facts were known that effective action could be taken. Finally, they recalled that those affected by child labour and bonded labour practices often entered these situations at an early age and would remain in this terrible condition if no action were taken.

**The Worker members,** referring to the statement of the Government representative, emphasized that they always respected Government representatives and Employer members, but it seemed that the Government representative did not appear to be showing such respect towards the other members of the Committee. Even though problems still had to be solved, in their view, some progress had been made in the case of India. India had ratified the Forced Labour Convention, 1930 (No. 29), in 1954. The Committee of Experts had made its first comments in 1966, and last year, the Committee had again addressed the question of the application of this Convention. However, it had to be said that the process was taking too long.

One of the recurrent problems revealed by the Committee of Experts concerned the lack of precise and reliable statistical information on bonded labour, child labour, prostitution and sexual exploitation. While noting the explanations provided by the Government representative in this regard, the Worker members indicated that statistical information was essential for the correct evaluation of the scope of the problem, particularly with regard to bonded labour. It was incomprehensible that the information provided by the Government on bonded labour, revealing 280,411 bonded labourers, differed considerably from that provided by the ICFTU and other organizations, such as Anti-Slavery International, according to which this number varied between 5 and 20 million. It appeared that the Government was minimizing the extent of the problem, thereby preventing its effective resolution. They supported the requests made by the Committee of Experts concerning the compilation of precise statistical information on the number of persons in bonded labour. The Government should redouble its efforts to eliminate bonded labour in the country.

In its comments, the Committee of Experts had also emphasized the ineffectiveness of the vigilance committees that had to be established pursuant to the Bonded Labour System (Abolition) Act, 1976. It had requested the Government to provide information on the number of prosecutions, the number of convictions and the penalties imposed. According to Anti-Slavery International, persons found to be exacting bonded labour were not punished. The information provided by the Government referred to 4,743 prosecutions under the 1976 Act. In this respect, the Committee of Experts had observed that, in the light of Article 25 of the Convention, this number appeared to be inadequate in comparison with the potential number of bonded labourers. The Worker members insisted that the Government provide the information requested by the Committee of Experts so that it could examine the effectiveness of the measures taken and their application. According to the Government's statement, the governments of the different states of India were responsible for the application of the 1976 Act with a view to identifying and releasing bonded labourers. Nevertheless, the central Government had to ensure that the different states exercised their responsibility. Even though the Committee of Experts had found that positive steps had been taken, the Worker members insisted that a joint project should be established between the central Government and the governments of states in order to achieve the required results.

Referring to child labour, the Committee of Experts had noted information from the International Programme for the Elimination of Child Labour (IPEC) and the concluding observations of the United Nations Committee on the Rights of the Child made in February 2000. In its concluding observations, the Committee on the Rights of the Child had expressed concern "at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions". In June 2002, the ICFTU had transmitted its observations to the Committee of Experts. According to these observations, estimates of the numbers of children working in India varied between 22 and 50 million, and the efforts to reduce child labour had not yet had much impact and were considered to be inadequate in view of the scale of the problem. The Government had not responded to these observations. The Worker members noted the positive steps taken, but urged the Government to continue its efforts.

The Committee of Experts had expressed great concern at child labour in the informal sector. In this regard, the Government had indicated that it had no intention of extending the coverage of the Child Labour (Prohibition and Regulation) Act, 1986, or the Factories Act, 1948. This was why it was essential to adopt legislative provisions and to strengthen the machinery for the application of the legislation so that children working in the informal sector were also covered by these laws.

With regard to prostitution and sexual exploitation, the Committee of Experts had welcomed the action taken by the Government, particularly in reviewing the existing legal framework with a view to applying more severe penalties to traffickers, enacting legislation to prohibit Devdasi and Jogin traditions of sexual exploitation, and ratification by India of the International Protocol to prevent, suppress and punish trafficking in persons, especially women and children. The Worker members expressed their support for these measures and emphasized the need for their practical implementation. They hoped that next year the Government would provide all the necessary information in this regard. They requested the Government to take the necessary measures to compile reliable statistical information so that a programme of effective action against forced labour, child labour, prostitution and sexual exploitation could be developed. Despite the progress made, the Government should redouble its efforts to resolve the problem in an effective manner. Finally, they recalled that the Government could request the technical assistance of the ILO.

**The Worker member of Colombia** indicated that, even though India was a country located far from Colombia and from Latin America, this did not constitute an insurmountable obstacle to expressing solidarity with the serious situation that affected workers, due to the permanent violations of Convention No. 29 by those who abused their economic, political and social powers. He added that the Committee of Experts had provided a very complete picture of this human tragedy which affected several million human beings, seriously compromising the future of the country.

Bonded labour, prostitution and the sexual exploitation of women and children deserved the full attention of the Government and the information provided by the Government on the measures taken to combat this calamity, which caused immense suffering to millions of families, was therefore encouraging. He added that it would be very valuable to strengthen the efforts to eradicate this problem. He emphasized that the efforts and actions taken by the Government should enjoy the real support of the international community, and principally of the industrial countries, which possessed sufficient resources to help this country and the poorest people who were the victims of these violations. It was unacceptable in the twenty-first century that humanity had to observe without taking any action the exploitation of those who, by their conditions of poverty, were reduced to slavery to allow the illegal enrichment of a minority which did not respect the right to freedom of their own brothers. Finally, he emphasized that a country that was incapable of applying and ensuring compliance with Convention No. 29 had no future.

**The Employer member of India** emphasized that, with issues as important as child labour and forced labour, both employers and governments needed to show their commitment and explain the action that was being taken, as the Government representative had done at length. However, the discussion of this case raised a number of important issues, including that of the reliability of statistical information. When the Government of India, with all its technical expertise and administrative machinery, undertook surveys which concluded that there had been 2.8 million bonded labourers, of whom 2.5 million had been rehabilitated, why should the Committee of Experts lend credence to wild estimates which placed the numbers of bonded and forced labourers at many millions of persons. Organizations which put forward such allegations should give proof that they were well-founded, for example by swearing affidavits before the Supreme Court of India, as the chief secretaries of Indian states had to do concerning the statistics that they produced. It was necessary to preserve tripartism from being held to ransom by civil society. Indeed, as the Government was undertaking vigorous campaigns to eradicate these problems and had the necessary legislative and constitutional provisions to make them illegal, there were serious grounds for wondering why this case had been examined by the Committee on many occasions for the past two decades. Most of the other cases examined by the Committee consisted of clear discrepancies between the provisions of the respective Convention and the national legislation. This was clearly not true with regard to the application of Convention No. 29 by India and he therefore hoped that this matter would not be examined again by the Committee.

**The Worker member of India** reaffirmed that bonded and forced labour were a great blemish on humanity that needed to be eradicated as soon as possible. Recalling that the Government of India had ratified the Convention in 1954 and adopted the main legislation implementing it in 1976, he explained that labour was a concurrent subject in his country, although the basic responsibility for labour matters lay with the state governments. However, the states were at different stages of development and showed great disparities in terms of education, health and industrial development. Both bonded and forced labour were directly related to the high levels of poverty and unemployment in the country and had their origins in its legacy of imperialist exploitation. In this respect, he recalled that such important issues would never be resolved in isolation and that the real remedy lay in providing employment and a respectable livelihood to every able-bodied citizen. For this to be achieved, it was necessary for production to be based on sustainable technology which respected the dignity of workers, ecology and the rights of consumers. However, the over-hasty pursuit of rapid development inevitably led to the use of unsustainable technology, resulting in jobless growth. This was the basic problem which required immediate attention.

He indicated that the trade unions and Government of India, as well as the Supreme Court, were all united in their determination to bring an end to forced and bonded labour. However, he warned that the issue was being blown out of proportion by certain parties for ulterior motives. The figures for bonded labour put forward by the Government could not be false, since the Government was answerable for them to the democratically elected Parliament. In 2001, the Government representative had challenged those who claimed that the figures were much higher to raise the issue before the Indian courts, but they had been afraid to do so. He warned that those who wished to malign the country should not be encouraged and said that the application of Convention No. 29 by his country had been discussed on too many occasions.

**The Government member of Sweden, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Norway** emphasized that the Nordic Governments were very committed to combating child labour, not least through their extensive support for the ILO-IPEC programme. She therefore welcomed the Government of India's efforts to address child labour and its commitment to eliminating it. She emphasized the urgency of providing accurate data as a basis for estimating the extent of bonded labour, child labour and sexual exploitation in the country. Such data would enable the Government to develop effective systems to combat these serious problems and would provide a realistic basis for assessing the effectiveness of such systems. She called upon the Government to pursue its efforts in this field, particularly with regard to the identification of working children. Finally, she encouraged the Government to reinforce the legislative provisions and strengthen the law enforcement machinery as soon as possible, emphasizing that legislation along with socio-economic measures were vital for the effective eradication of hazardous forms of child labour and the sexual exploitation of children.

**The Government member of Guatemala** expressed his appreciation for the frank and direct statement by the Government representative of India. He shared the concerns expressed by India with respect to the criteria for the compilation of the list of countries called upon to enter into dialogue with the Committee, and in general with regard to its methods of work. The same sentiment had been expressed by the delegations of Venezuela and Cuba in a previous sitting. He emphasized the need to include this subject on the agenda of the Committee at the next session of the International Labour Conference, as well as to continue and extend tripartite consultations in this regard.

**The Government member of Cuba** expressed her gratitude and appreciation for the explanations of the Government representative of India. She stated that there was no reason to doubt the explanations of the Government representative with regard to statistics, which had to be the subject of rational analysis. Referring to paragraph 11 of the observation of the Committee of Experts concerning the application of the Convention in the country, she expressed her surprise that it included the comments of an international organization to which the Government had not had an opportunity to respond, and which moreover referred to a point on which the Committee of Experts had acknowledged the progress achieved. She considered it inexcusable to publicize such comments without waiting for the response of the Government. She recalled that the report of the Committee of Experts contained other similar cases, but that they had been treated with more discretion, and that the approach adopted in the present case did not constitute an impartial and objective examination of the question.

**A Worker member of France** referring to the statement made by the Government representative of Cuba indicated that the non-governmental organizations in question had consultative status with the United Nations and that they participated in the work of the Committee on Human Rights and its Subcommittee.

**The Worker member of the United Kingdom** referring to personal experience in India visiting child labour projects and observing the action of the ILO, trade unions, employers, government officials and NGOs, described the highly beneficial effects of liberating children from work, including bonded labour, and the great opportunities offered to them by the possibility of attending school. Those who had experienced the harsh reality of child and bonded labour, and who were subsequently freed and educated, became advocates of universal education and staunch opponents of child labour. Although the freedom enjoyed by the lucky ones was theoretically a right, it was in practice a hard fought for treasure. Millions of children in the country remained in bondage and the progress made in the elimination of bonded labour was too slow. The statistics compiled by such reputable organizations as Anti-Slavery International and Human Rights Watch, which enjoyed observer status with the United Nations, showed that the figures given by the Government were much too low. He emphasized that effective national policy required a far more reliable statistical basis and recommended that the Government seek expert ILO assistance in this regard. He added that, in view of the overwhelming prevalence of child labour in the informal economy and in agriculture, the Government's refusal to extend the Child Labour and Factories Acts to these sectors amounted to a dereliction of its moral and legal duty. In response to the Government's claim that the abolition of child labour required a holistic anti-poverty approach, rather than coercive and inspection mechanisms, he emphasized that it needed both. As indicated by the United Nations Committee on the Rights of the Child, promotional and development approaches could not function outside or replace the rule of law. He therefore called for labour inspection to be expanded and strengthened and for multi-agency and tripartite cooperation to be developed. While India was the world's largest democratic federal republic, practice varied widely at the state level. For example, Kerala remained one of the world's best examples of universal basic education and the effective abolition of child labour. Although poor, it had demonstrated a wealth of political will. Effective action had also been taken for the elimination of child labour in certain sectors in other states. However, others suffered from severe deficiencies in education and had a patchy record in the prevention and eradication of child labour and bonded labour. These different levels of success were illustrated by the wide variance in the efficacy of vigilance committees, the extent of political will and the rule of law. He called on the Government and the ILO to pay greater attention to the huge inconsistency in tripartite concerted action. It was the central Government's responsibility to overcome obstacles presented by state governments. The elimination of child labour required the sustainable protection of working people through the enforcement of good laws and through organization, collective bargaining and social dialogue. In conclusion, he said that India required an authoritative, competent and comprehensive survey of bonded labour, as well as vigilance committees and district magistrates that were trained and willing to enforce the law. He also called upon the Government to ratify and apply the ILO's other fundamental Conventions with a view to supporting the eradication of bonded labour, trafficking and child labour.

**The Government representative** thanked those who had taken the floor and felt encouraged by most of the comments made. With reference to the remarks of the Employer members, he specified that the figure of 280,000 bonded labourers given by the Government was of the bonded labourers as of 1976 when the Bonded Labour (Abolition) Act was passed. This has now been reduced by 260,000, who had been released, with only the balance remaining in bonded labour. He reiterated that in a democratic system such as the one in his own country it would be impossible to conceal a problem of the magnitude alleged by some of the most extravagant figures put forward by various groups, which should be subjected to close scrutiny. He added that, despite some of the suggestions made, his country had the necessary technical expertise to address the problems under review and did not require technical assistance. He reaffirmed that his country was deeply committed to the elimination of child labour and had spent very large sums of money on action for this purpose. The Prime Minister of India had himself announced the Government's intention to eliminate child labour to a substantial extent in the current five-year plan. In view of the size of the country, it should not be forgotten that action at the district level, for example, could affect a population equivalent to that of some smaller European countries. Although the observation of the Committee of Experts had referred frequently to the action programmes undertaken by IPEC, it should not therefore be forgotten that the investment made by the Indian Government was of a dif-

ferent order of magnitude. The Indian Government had committed more than US$55 million between 1997 and 2002, and over US$115 million in the current plan (2002-07), whereas ILO/IPEC had spent only US$5 million in the last ten years in the country. The work of the Government of India should therefore be seen in this perspective.

Turning to the question of the procedure followed by the Committee, he said that before the next session of the Conference, his Government would take the lead in opening up the discussion on this matter by raising a number of fundamental questions, such as why the representatives of a handful of countries occupied so many important positions. It was necessary for reflection to go forward on this matter so that the credibility of the institution was not undermined.

Finally, he reaffirmed the responsible attitude of his Government and recalled that it was answerable to the national Parliament and local government bodies. He emphasized that it was only necessary to consult the annual report of the Ministry of Labour to find reliable statistics of the numbers of bonded labourers identified and rehabilitated. He added that his country boasted a record on certain human rights issues which could not be bettered by some of the most industrialized countries in the world, such as the fact that one-third of all positions in decentralized local self-government reaching down to 500,000 villages were reserved for women.

**Another Government member of France** strongly opposed the statements made by the Government representative of India questioning the impartiality of the ILO secretariat and referring to the dominance of certain nationalities. He added that this type of argument should not be used in the Committee.

**The Employer members** recalled that the matter under examination was of a very serious nature and regretted that the Government representative had used the occasion to make a political statement, without focusing on the subject under discussion. They noted the rejection by the Government representative of the high figures for forced and bonded labour mentioned in the statistics communicated by non-governmental organizations. However, they recalled that the Government representatives who had addressed the Committee in previous years had often placed emphasis on the difficulty of producing accurate statistics, particularly in view of the different levels of technical expertise and commitment of the various states. They concluded that a great deal remained to be done to resolve the problems under discussion and emphasized that the Government of India was responsible to the ILO for the implementation of the Conventions that it had ratified.

**The Worker members** indicated that the statement made by the Government representative questioned the impartiality of the Committee of Experts and the Committee on the Application of Standards, as well as the competence of the officials of the Organization. They recalled that it was necessary to compile precise and reliable statistical information on the number of persons still working in bondage. Child labour, particularly in the informal sector, remained a matter of concern, and the Government had to redouble its efforts to eliminate this practice. Furthermore, the scope of the Child Labour (Prohibition and Regulation) Act, 1986, and the Factories Act, 1948, should be extended to the informal sector. They called upon the Government to ratify and apply Conventions Nos. 138 and 182 in the very near future. In conclusion, the Worker members recalled that the Government could always request the technical assistance of the ILO.

**The Committee noted the information provided by his Excellency the Ambassador and the discussion that followed. The Committee considered that this was a serious case of repeated failure to implement a fundamental Convention. It recalled that the Committee had decided that it would discuss this case in view of its serious nature and magnitude and the comments that had been received from workers' organizations on many occasions. The Committee commended the positive measures adopted by the Government and its commitment to address the problem, as well as the important role of the Supreme Court of India. The Committee therefore urged the Government to continue its efforts with renewed vigour in order to eradicate bonded labour in the country and combat child forced labour in the framework of the present Convention, especially in the informal sector, and the sexual exploitation of children. The Committee emphasized that it was vital to develop and reinforce the legal provisions and to strengthen the machinery for the implementation of the legislation, along with socio-economic measures for the effective eradication of bonded labour and child labour. The Committee noted the fragility of the statistical system and the efforts made to correct such deficiencies. The Committee expressed the firm hope that the Government's next report to the Committee of Experts would contain detailed information on the action taken, the progress made and the measures adopted to reinforce the statistical system and that the full implementation of the Convention would be ensured in law as well as in practice.**

**The Government representative** explained that a first version of the Committee's conclusions, which had initially been read out by the Chairperson, had erred in the fact that some sections represented the views of the Committee, while others purported to reflect the views of the Government. He denied, for example, that he had in any way acknowledged the weakness of the statistical base in his country and he reaffirmed that the national statistics were comprehensive and complete. Those who alleged the opposite based their allegations on constant repetition rather than on any well-founded reasoning. Indeed, some of the most fanciful statistics proposed were clearly preposterous. The position of his Government was not to deny the existence of forced and bonded labour, but to reaffirm that the problem was being addressed with full vigour and was being substantially reduced. He added that the calls made by the Committee for the Government to take more strenuous action in this regard were gratuitous, as the Government was in any case doing its utmost. He therefore called upon the Committee to assume the responsibility for its views and to weigh its words with great care. Finally, he said that he had no particular criticism of the report of the Committee of Experts, but that he questioned the practices of the present Committee. For example, the Committee's credibility would be strengthened if its conclusions were formulated in association with the Government representative concerned, rather than just with the spokespersons of the Employer and Worker members.

The **Worker members** proposed that the Committee should merely note the last statement by the Government representative.

***Mauritania*** (ratification: 1961). **The Government representative** recalled that his Government had undertaken to respect three commitments: to provide detailed and precise replies to the Committee of Experts, to adopt a draft Labour Code with ILO assistance and to allow an ILO technical mission to visit Mauritania. Concerning the adoption of a draft Labour Code, he indicated that such a draft had been approved in a first reading on 2 June. It provided for the prohibition of forced labour. This prohibition covered all labour relations, even if they did not involve a contract. He also noted that the Government had approved draft legislation on the trafficking of persons, including a broad definition of this term, as well as specific penalties and sanctions to be imposed in case of violations. With respect to the ILO technical mission, he emphasized the heavy workload involved in the finalization of the Labour Code and the law on the trafficking of persons. He also mentioned the serious and distressing events which had recently taken place in Mauritania, as a result of which the legitimate Government had almost been overthrown. He assured the Conference Committee that, as soon as the situation had been stabilized, the Government would fix a precise date to invite an ILO technical mission to Nouakchott.

**The Worker members** indicated that the Committee was once again discussing the serious problem of the violation of human rights in Mauritania. When the case had first been discussed in 1982, they had expressed the hope that the Government would make a serious commitment to eliminating slavery in the country. However, the observation made by the Committee of Experts showed that certain forms of slavery persisted. Indeed, it appeared that in the eyes of some, the descendents of slaves always suffered from a lower status from birth. These persons of lower status, who worked as agricultural workers, shepherds or servants, were entirely dependent on their masters to whom they gave the money that they earned or for whom they worked directly in exchange for food and lodging. It was therefore to be regretted that the Government continued to maintain that these were merely vestiges of the former social system or isolated cases, and that slavery had been abolished in Mauritania.

Despite the adoption of three legislative texts prohibiting forced or compulsory labour, namely the Constitution of 20 May 1961, Act No. 36-023 of 23 January 1963 issuing the Labour Code and the Order of 1980, the practice of slavery still existed in Mauritania. The refusal of the Government to acknowledge the existence of this grave problem condoned the existence of the practice. On several occasions, the Committee of Experts had called upon the Government to: (i) adopt a provision imposing legal sanctions in accordance with article 25 of Convention No. 29; (ii) extend the scope of the prohibition of forced or compulsory labour to all employment relations; (iii) repeal the Ordinance of 1962 conferring very broad powers on local leaders to requisition labour; and (iv) establish a complete list of establishments considered to be essential services for the population and which could be affected by a possible requisition order. Despite these requests, nothing had changed.

With regard to legal sanctions, no provisions had been adopted to give effect to Article 25 of the Convention. On the subject of the extension of the scope of the prohibition of forced labour, the current amendment to section 5 of the Labour Code, providing that any violation would be punishable in accordance with the penalties set out in the legislation in force, would give effect to the recommendations of the Committee of Experts. With regard to the repeal of the Ordinance of 1962 and the establishment of a list of the establishments considered to be essential services, the Government had not provided any information, thereby showing its lack of good will. Despite certain measures at the legislative level, there were no grounds for believing that changes had been made in practice. The fact that the imposition of sanctions was prevented on persons perpetrating practices of slavery did not instil confidence in the good will of the Government to eliminate forced or compulsory labour. The adoption of legal provisions was not sufficient. It was also necessary to take economic measures with a view to the reintegration of the victims of slavery into society and their compensation. Campaigns to raise the awareness of the population also needed to be undertaken.

The previous year, the Government had undertaken to accept an ILO technical assistance mission. The Worker members regretted that the mission had not been able to visit the country. They hoped that the mission had been prevented for reasons of a practical nature. However, they recalled that for many years the Government had been prohibiting both the access to the country and the activities of human rights organizations. The Worker members called for a technical assistance mission to be sent to Mauritania so that the appropriate legal provisions could be adopted.

**The Employer members** recalled that the case of Mauritania had been already discussed by the Conference Committee the previous year. They noted that several forms of slavery still existed in the country, particularly in rural areas. Despite the formal prohibition of slavery, slave-like conditions continued to exist and they had to be eliminated. The key issue was the abolition of forced labour in practice. Referring to the statement by the Government representative that on 2 June 2003 a new law had been adopted targeting the abolition of such slave-like labour practices, the Employer members asked whether it had already come into force and had been implemented. The practice of forced labour was not only the vestiges of an old tradition, but also had systemic roots and would be difficult to eradicate immediately. While the Government representative might be able to deny specific instances of forced labour that were raised, the overall existence of forced labour in the country could not be concealed.

They regretted that a technical mission had not taken place, and noted the willingness expressed by the Government to make use of further technical assistance. Essentially, what was needed was a legal basis for the elimination of forced labour. However, the existing laws did not provide adequate sanctions for violations and they had not been implemented effectively. They requested the Government representative to provide necessary information to back up his statements on the action taken with a view to bringing national legislation into line with the Convention. The Employer members further recalled that in 2002 the Government had announced that it would repeal the Act of 1971 which provided for the possibility of requisitioning labour under specific emergency circumstances to ensure the functioning of services considered to be essential for the country or the population. They emphasized the need for the Government to provide more precise information on what services were covered by these provisions. Referring to Decree No. 70-153 of 23 May 1970 issuing the internal rules of prison establishments, they requested the Government to provide specific information on the measures taken to amend this Decree. They indicated in this respect that more precise regulations were required governing the hiring of prison labour to private individuals, since this remained under the overall responsibility of the public authorities. In conclusion, they emphasized that further action of a legislative and administrative nature was urgently needed to eliminate forced labour practices. They therefore urged the Government to provide full and complete information on the measures taken in the past and those intended in the future so that urgent action could be taken to generally abolish this rare remaining case of slavery.

**The Worker member of Mauritania** regretted that his country had once again been called before the Committee with regard to the application of Convention No. 29. He deplored the fact that his Government, despite the many calls made upon it, had remained indifferent to the sufferings endured by the victims of slavery. The problem of slavery was still topical in his country and required rigorous action.

The previous year, the Committee had had a long discussion of this case as well as the commitment the Government had made to accept an ILO technical assistance mission. This attitude had appeared to be a sign of good will, but had turned out to be merely another way of putting off a decision by the Committee and of continuing the violation of this fundamental Convention on forced labour. This situation was a violation of the human, economic and social rights of men and women who were born free and who aspired, as did all human beings, to freedom, dignity and a decent life. Reference was now being made to the provisions contained in the new Labour Code as a means of affording protection. However, the problems of slavery were difficult and complex. The few provisions contained in the Labour Code would not be sufficient to resolve them, particularly when their application in practice was the responsibility of labour inspectors who were renowned for their complacency and lack of respect for workers' rights. Nevertheless, the Free Confederation of Workers of Mauritania (CLTM) had put much effort in recent years into the adoption of the Labour Code, which would undoubtedly strengthen the protection provided. Among the new provisions, certain were related to the definition of slavery and trafficking, the protection of victims and the punishment of offenders. However, assistance policies were also needed, including the development and adoption of specific economic and social programmes, a policy of integration and an awareness-raising campaign. The CLTM recognized that, although important measures had been taken in recent years, such as Ordinance No. 81-234 of 1981, these had merely consisted of political decisions which had had no impact at the practical and institutional levels. Moreover, they were not of a nature to strengthen the protection and support provided as they had not been accompanied by legal, economic and social measures.

He reported that an awareness-raising seminar on forced labour, organized by the CLTM with the support of the WCL, which was to have been held in Kiffa in 2001, had been prohibited by the authorities. Now the CLTM, which was the most representative organization in the country through its trade union activities, its structures and 60,000 members, was the organization that was attacked the most by the authorities. Its members were subjected to pressure, intimidation and dismissal. Its activities had been blocked and over 200 dockers had been dismissed following a strike in October 2002. Recently, a very strong campaign had been carried out by the authorities to force militants in public establishments, using all possible means, to join the General Union of Mauritanian Workers (UTM). This campaign had greatly harmed the CLTM. In conclusion, he hoped that on this occasion the Government would collaborate with the ILO and accept a technical mission and ILO assistance. He added that the CLTM was prepared to collaborate with the ILO and the Government with a view to the implementation of Convention No. 29 and for the promotion of social dialogue which, unfortunately, did not exist in his country.

**Another Worker member of Mauritania** requested the Conference Committee to examine the report of the Committee of Experts clearly and without going beyond the technical issues raised, so as to avoid the politicization of the Committee. He emphasized that it was necessary to make a distinction between the "village chief", which was a historical concept that no longer existed, and the "area chief". He stated that he defended the interests of the workers, but it was necessary to make it clear that slavery was a historical phenomenon which no longer existed in the traditional sense. Referring to the statement by the Worker members, he emphasized that there had never been any question of sending an inquiry mission to Mauritania, but rather a technical mission. He added that the technical mission should not visit Mauritania in order to make inquires, but to provide assistance because the Labour Code had recently been adopted. Finally, he suggested that the evaluation of the representativity of trade union organizations should be part of the mandate of the technical mission.

**The Government representative** doubted the soundness of the allegations made by the Worker and Employer members. He indicated that the discussions had to be based on the report of the Committee of Experts and should not touch on political considerations. Social justice should be objective and balanced in order to resolve the problems, and not to make accusations. The allegation of slavery was extremely serious. The Government had never recognized the persistence of slave-like practices in the country. It was true that Mauritania had had castes, but the descendents of former slaves were no longer considered as slaves today, and the fact that a person belonged to a particular historical social category today had no consequences for their rights. There were no longer any occupations reserved for descendants of slaves (shepherds, domestic workers), and these jobs were performed by all classes. Those that had these jobs received wages higher than the minimum wage.

Referring to the statement by the Worker members alleging serious violations of human rights in Mauritania since 1982, he indicated that the country had been governed by the rule of law since 1991 and that there were around 20 political parties, as well as five

trade union organizations. The Government also respected public freedoms, freedom of association and of organization. There were no prisoners and there were 10 free newspapers that criticized the Government without fear. Even the Secretary-General of the CLTM knew he could make all sorts of allegations without worry. He emphasized the importance of adopting a responsible attitude and the need for speakers to weigh their words carefully. The Worker members should verify their sources before making allegations and read the Government's written statements. He denied the allegations of the Worker members that the origin of a person had an effect on their status. He indicated, for example, that shepherds were better paid than teachers, and that the salary of a domestic worker was higher than that of a police officer. There were no public secrets and if slavery really existed the Government would not close its eyes to it and would not discuss the definition of this phenomenon. He said that the debate was surreal. Mauritania faced many other problems, such as underemployment. In this respect, he challenged those making allegations to inform the judiciary of one single case of slavery. The Government had recently made many efforts to respond to the requests of the Committee of Experts and the Conference Committee. In this regard, he recalled that the Labour Code, which was in the process of adoption, effectively introduced the prohibition of forced labour and provided that any violation of its provisions would be punishable by sanctions. He had also reiterated the Government's intention to formally repeal the Order of 1962. The Committee should understand that this involved much work and take into account the weakness of the administration. He forcefully reiterated that there was no lack of goodwill on the Government's part.

He recalled that the country had just experienced an attempted coup, which had threatened the rule of law, from which thankfully it had been preserved. In his opinion, it was now necessary to preserve the rule of law instead of responding to allegations. While it was normal for the Employer and Worker members to defend social standards and implementation of Conventions, they should not adopt a punitive approach.

**The Worker members** recalled that their clear objective was compliance with standards, nothing more, nothing less. Up to now, the Government had not acknowledged that slavery was a problem, which was preventing its eradication. The Worker members had based their statements on the hard facts in the report of the Committee of Experts. Although legislation prohibiting forced labour existed, it still needed to be implemented in practice. The Worker members called on the Government to open up the debate and to let civil society address the problem openly. After so many years, they considered that a direct contacts mission was necessary to assess the situation in the country, before technical assistance could be of use.

**The Employer members** regretted that no progress had apparently been made in this case, despite the fact that it had been discussed the previous year, as well as in 1989 and 1990. Despite the eloquence of the Government representative, he had provided no new information. Moreover, he did not appear to understand the gravity of the problem or to realize the measures that needed to be taken in law and in practice. Indeed, he had seemed intent on minimizing the problems that still remained. However, through his statements, he had in fact admitted the persistence of forced labour, particularly in agriculture, domestic work and animal husbandry. The Employer members further noted that anyone who drew attention to these problems in the country ran the risk of being penalized. They therefore called upon the Government to openly acknowledge the problems that still existed so that the necessary measures could be taken, with particular emphasis on the application of effective sanctions for any violations of the respective legislation. They supported the proposal by the Worker members that a direct contacts mission be sent to Mauritania to help with the application of the Convention.

**The Committee noted the information provided by the Government representative and the discussion that followed. The Committee shared the concern expressed by the Committee of Experts at the absence of legal provisions penalizing the exaction of forced labour and regretted that the mission which had been accepted by the Government had not taken place. The Committee noted the statement of the Government representative concerning the adoption at the first reading of the Labour Code and draft legislation to suppress the trafficking of persons. The Committee expressed deep concern at the persistence of situations which constituted grave violations of the prohibition of forced labour. It urged the Government that a technical assistance mission should take place in the form of a direct contacts mission to the country to help the Government and the social partners with a view to the application of the Convention. The Committee hoped that progress would be made in practice in the near future in this case. The Committee decided to place its conclusions in a special paragraph of its report.**

**The Government representative** stated that the adoption of the conclusions in their present form would render the Committee's discussions meaningless. Up to now none of the allegations made had been proven to be true. To base conclusions on such hypotheses undermined the credibility of the Committee and gave no credit to the good faith that the Government had always shown.

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

***United Arab Emirates*** (ratification: 1982). **A Government representative** stated that the provisions of the Convention were applied without problems in the Emirates in accordance with the Constitution, national legislation and practice. The Constitution included several provisions on the prohibition of any exploitation of children or their abuse. Section 350 of the Penal Code penalized any person who exposed to danger any child who had not completed 7 years of age, and who acted either on his own volition or in collaboration with others. On human trafficking, he referred to section 346 of the Penal Code which specified the penalty of detention of any person who would own, buy, sell or dispose of any person as a slave. Section 20 of the Labour Code provided for the prohibition of employment of young persons under the age of 15, and section 34 specified legal sanctions against persons who were legal guardians of young persons, if they allowed the employment of a child in violation of the provisions of the law.

As for the observation made by the Committee of Experts, the Government representative reiterated that in 2002 his delegation had provided to the Committee all the relevant information relating to the claims contained in the communications of the International Confederation of Free Trade Unions (ICFTU) of 2000 and 2001 on the phenomenon of using children as camel jockeys in camel races. He pointed out that police investigations had proved that the cases involving the use of children in camel racing were not a widespread practice but constituted a limited phenomenon, monitored by the police corps. The investigation further clarified that it was the parents of those children who were exposing them to work for material gain, without the knowledge of the competent public authorities.

He highlighted that there were new developments that had occurred since the last meeting of the Conference Committee. He pointed out that upon the instructions of the President of the State, the Secretary of State for Foreign Affairs, the President of the Camel Racing Federation had promulgated Order No. 1/6/266 of 22 July 2002 providing for the minimum age of 15 for a camel jockey and the proof of age through a passport; the issuing of a medical certificate for a camel jockey, issued by the Camel Racing Federation; the setting down of the minimum weight of a camel jockey of 45 kilos; and lastly the imposing of penalties in case of violation. The penalties were various: the owner or responsible person would be fined the sum of 20,000 dirhams for the first offence; for the second offence, the owner would be prohibited from participating in a camel race for a full year; and the imprisonment of the responsible person for three months in addition to a fine valued at 20,000 dirhams for the third offence. This Order authorized the Ministry of Interior to enforce it as of September 2002. He further underlined that the General Directorate on Nationality and Residence was instructed to increase the procedures relating to the importing of camel jockeys, in accordance with the regulations formulated by the Camel Racing Federation.

The speaker indicated that there was a draft law which was currently being discussed in the Technical Committee on Legislation regulating the various issues on camel races, and which was in its final stages of adoption. He then referred to the agreement by the Administration on Fatwa and Legislation within the Ministry of Justice and the Technical Committee on Legislation to amend section 20 of the Federal Labour Code (Law No. 8 of 1980), and which provided for raising the age of employment to 18 years for hazardous tasks and tasks which jeopardized the health or morals of young persons. The above amendment was currently before the competent authorities for final adoption.

He then reverted to the communication submitted by the ICFTU of September 2002 which was communicated to the Ministry of Justice and Social Affairs in October 2002. He noted that the communication contained a repetition of previous comments submitted by the ICFTU during the years 2000 and 2001 in addition to new allegations. He added that his Government had previously replied to the claims of 2001 and referred to new claims to the competent authority, to study them and provide the information required. The ILO would be informed accordingly.

With respect to the United States State Department Report of 2001 on the practices of human rights in the United Arab Emirates, he indicated that the Ministry of Labour and Social Affairs had transmitted the communication to the competent authorities for

their examination. He reassured the Committee that they would receive the information once it was available, for examination by the Committee of Experts. The Government representative quoted item (d) of the report of the United States State Department of 2002 (page 12) which stated that "In September, the Government implemented and began enforcing the child camel jockey ban with criminal penalties for violators up to and including imprisonment. The ban prohibits the use of camel jockeys less than 15 years and less than 45 kilos …". The report showed a positive development in the Government's handling of the phenomenon of using children in camel races.

He further indicated that his country was endeavouring to raise awareness among residents with respect to the importance of observing laws and to collaborate with the competent authority with an aim to putting an end to all negative phenomena in public life in general, and in the labour market in particular. He concluded by referring to the guide book which was issued by the Ministry of Labour and Social Affairs, intended for persons wishing to be employed in the UAE. The guide book gave a description of all the procedures relating to employment and labour relations. It was distributed to all embassies and consulates in all parts of the world.

**The Employer members** stated that the problem was precisely the same as it had been in previous discussions conducted with the United Arab Emirates with regard to the Minimum Age Convention, 1973 (No. 138). They recognized that the phenomenon belonged to both Conventions. Small boys were forced to work as camel jockeys. In some instances, the children were kidnapped from abroad or trafficked to the United Arab Emirates. While the problem at stake was well known, the Government did not provide any new information. Although the problem might be a limited one, it was enough that even a limited number of children were subjected to this bad practice. The indication that police investigations did not lead to any penal action was not convincing. Camel races did not take place every day, but when they did, they were held publicly. The Employer members also stated that camel races were organized by wealthy people and that the Decree prohibiting the use of children as camel jockeys had been issued by the same person who was also the President of the Camel Race Federation. This underlined the importance of such races in the country. There was no easy solution to the problem, but the Employer members had to insist that the Government would change its attitude on the issue. Progress could not be made by minimizing or denying the problem, but by taking effective measures. The fact that during the 2002 Conference Committee session the Government representative merely admitted two cases of exploitation of children working as camel jockeys demonstrated that a change in the Government's attitude was necessary. The Government was requested to forward a report to the Committee of Experts containing precise and new information.

**The Worker members** thanked the Government representative for the information supplied. They recalled that the worker's interest in the case was not motivated by enmity, but in criticizing failure to fulfil obligations arising from the ratification of ILO Conventions, they sought only to urge conformity with the Convention in the interest of all members States and the people who live and work in them. The Worker members pointed out that this case was simple: young boys, primarily from South Asia, were forcibly sent to the United Arab Emirates to be used as jockeys in camel races. Firstly, this entailed hazards related to trafficking, including separation from families, exposure to the risk of abuse and the forced nature of the work. Secondly, this entailed the hazards arising from the camel jockeying itself, which was considered, as agreed in the Conference Committee in 2002, to be a worst form of child labour, precisely because of these great physical hazards which were inextricably linked to this practice.

The Worker members stated that much was owed to Anti-Slavery International, which made efforts to document the issue, and they deplored the fact that a non-governmental organization such as Anti-Slavery International should still have to exist in the twenty-first century. Referring to the suggestion by some delegates that this was a cultural matter and that the same issues would not have been brought up had it been horse racing, the Workers members expressed disagreement by quoting from the International Agreement on Breeding and Racing of January 2002 which considers horse riding as a very hazardous activity that could lead to risks of injury, permanent disability or death.

The fact that the issue involved Conventions Nos. 29, 138 and 182 demonstrated the complementarity and indivisibility of the fundamental human rights in Conventions of the ILO. Trafficking and forced labour of children were prohibited by Conventions Nos. 29 and 182, and in their view also by Convention No. 138 which prohibits types of work likely to jeopardize health, safety and morals of children under the age of 18 years. The Worker members doubted whether anyone in the Committee would argue that child slavery, and they believed that the practice in question constituted child slavery, was not therefore prohibited also under Convention No. 138. Prior to the adoption of Convention No. 182 and the increased number of ratifications of Convention No. 138, the Conference Committee had discussed cases of child labour under the terms of Convention No. 29, on the basis that children were too young to give genuinely free consent to work.

The Worker members recalled the assurances given by the Government to the Conference Committee in 2002 that it intended to amend section 20 of Law No. 8 to prohibit hazardous work for children under the age of 18 years in accordance with Conventions Nos. 138 and 182. The Committee had noted these assurances and the indication that those responsible would be subject to legal action. The Worker members therefore deplored that, one year later, the amendment was still only under consideration. Trafficking continued, in particular from Bangladesh and Pakistan, because there was a demand for young boys for camel racing. According to the United States State Department Human Rights Report of 2002, laws were sometimes enforced against criminal trafficking rings but not against camel owners or those who "use" the children because such owners came from powerful families who were above the law. Further, the Worker members referred to a documentary report made in the United Arab Emirates by the Australian Broadcasting Corporation in October 2002, which showed very young boys racing camels and interviews with boys who explained how they had been trafficked, the work they were doing or had been forced to do, and they described or showed the injuries suffered. The film also showed that the camels were pampered with luxurious treatment while the jockeys suffered abuse, neglect, hunger and isolation, all apparently under the unmoved eyes of the police.

The Worker members noted the promulgation on 29 July 2002, by the Minister of Foreign Affairs, of an order which prohibits children less than 15 years of age and weighing less than 45 kg from being employed in camel racing. The order was imposing a fine of 20,000 dirhams (around US$5,500) for a first offence, while a second offence would lead to a ban on camel racing for one year, and prison sentences would be imposed for subsequent offences. The Worker members welcomed this step, but stressed that this legislation was not sufficient. They had not been provided with information on any prosecution, either because the authorities were incapable or simply ignored the violations which continued. As far back as 1980, Federal Law No. 8 of 1980 had banned employment for children under the age of 15 years and hazardous work for those under 18 years. Moreover, the 1987 Penal Code prohibited the buying of children, their exploitation and mishandling. The Government could have taken the opportunity, when it promulgated the order last July, to amend the laws or promulgate an order in conformity with the Conference Committee's conclusions of 2002. Increasing penalties were a start but, regardless of the level of sanctions provided for, the Worker members doubted whether prosecutions under the new order would take place.

Stressing that legislation had to be effectively enforced if conformity with the Convention was to be achieved, the Worker members expressed their impatience to see the Government taking real action. They supported the recommendation by the Committee of Experts that the Government should take the necessary measures to eradicate the trafficking in children for use as camel jockeys and to punish those responsible. They, however, reminded the Conference Committee that it had agreed at its 2002 session that the law should prohibit the use or employment of camel jockeys under the age of 18 years, because of its dangerous nature. Given the interrelationship between the relevant three Conventions, which had all been ratified by the United Arab Emirates, the Worker members believed that this point should be included in the Committee's conclusions. If the Government continued to find it difficult to ensure that law and practice were in conformity with Convention, it should be asked to seek the support of the Office. Indeed, the most sensible proposal might be that the Government invited a direct contacts mission to review progress and to assist in developing the necessary laws and practice. The Conference Committee should further recommend that the Government bring the laws in conformity with international conventions both as regards trafficking and on hazardous work for those under 18 years. It should also carry out regular unannounced inspections to identify, release and rehabilitate any child used as a camel jockey. Finally, the Government should prosecute those trafficking and employing underage jockeys, as well as pursue, with ILO support, greater cooperation with sending countries to stop trafficking.

**The Worker member of Japan** fully agreed with the statement made by the Worker members. In addition, she noted that her organization had information on forced labour in the United Arab Emirates concerning children as young as 5 or 6 years who were

trafficked from countries such as Pakistan and Bangladesh, and forced to work as camel jockeys. During 2002, Pakistani newspapers had reported 29 cases of child trafficking to the United Arab Emirates for camel racing. The speaker also noted that the Bangladeshi Consulate in Dubai had rescued more than 20 Bangladeshi children who had been forced to work as camel jockeys and domestic helpers. In conclusion, the speaker emphasized that all people, especially children, had the right to be educated and to develop their abilities to the maximum. She urged the Government to accept the observations of the Committee of Experts and to take all the necessary measures immediately.

**The Worker member of Pakistan** stated that children were the hope for the future of mankind and it was therefore the common responsibility of all nations to ensure their welfare. He had listened carefully to the information provided by the Government representative and took note of the legislative changes. These were welcomed, but the Committee of Experts had asked the Government to investigate more actively cases of human trafficking, in particular of children being used as camel jockeys. The Government should establish an effective machinery to enforce its laws and undertake awareness raising, while sanctions should have a deterrent effect. There was also a need for more technical cooperation, as well as cooperation between sending and receiving countries in the context of trafficking of humans. Finally, the speaker drew attention to new legislation adopted in Pakistan to prevent and punish human trafficking.

**The Government member of Kuwait**, **also speaking on behalf of the Government members of the Gulf Cooperation Council (GCC): Bahrain, Oman, Qatar, Saudi Arabia and United Arab Emirates,** expressed his endorsement of the statement made by the Government representative of the United Arab Emirates, reiterating that the Gulf Cooperation Council rejected outright the use of children in hazardous work. On that basis, the countries of the GCC had ratified Convention No. 182.

**The Employer member of the United Arab Emirates** indicated that the phenomenon of camel racing was a limited phenomenon in his country. Camel jockeying was a sport linked to the cultural heritage of his country and was practiced in a specific season of the year. He highlighted that the entry of children into the United Arab Emirates was subject to specific regulations as they were only allowed to enter with their parents and subsequently it was the responsibility of the parents if they opted for material gain. He underlined that his country had deployed huge efforts in putting an end to this phenomenon, and that penalties on violators were provided for. He concluded by expressing the support of the Employers to their Government, and requested the collaboration of exporting countries of children in eradicating this phenomenon without delay.

**The Government representative** indicated that the GCC countries were those countries that were best informed of the phenomenon of camel jockeying in the United Arab Emirates. He reiterated that since 2002 a positive development occurred which was the Order issued by the President of the Camel Racing Federation and the draft law regulating this sport. He reassured the Committee that he would communicate all the interventions made to the competent authorities who would take the necessary measures in this regard.

**The Worker members** concluded that the Government had little excuse: it had all the resources needed to bring its laws and practice into full conformity with the Convention, including through the development of an effective labour inspection and enforcement system, as well as rehabilitation. However, the Government was so far lacking political will.

**The Employer members** stated that most in the Committee had the same views on this particular case. Due to the history of the case it was necessary to recommend to the Government to receive a direct contacts mission in order to achieve substantive progress.

**The Committee noted the information provided by the Government representative and the discussion which followed. The Committee expressed its deep concern about the fact that numerous underage children continued to be used as camel jockeys. The Committee noted the concern expressed about the intrinsically hazardous nature of this activity, which, in its discussion last year in the context of Convention No. 138, it had concluded should not be performed by any person under the age of 18, and about child trafficking and enslavement, a situation which clearly violated the Forced Labour Convention, 1930 (No. 29). The Committee noted new information providing evidence of new cases of the trafficking of children to the United Arab Emirates for use as camel jockeys. The Committee noted the ratification, by the United Arab Emirates, of the fundamental human rights instruments which dealt with the issues of minimum age for hazardous work and child trafficking. The Committee requested the Government adjust its legislation to be in line with such instruments. The Committee recommends the Government to accept a direct contacts mission and asked for agreement on this recommendation at the meeting in session.**

**The Government representative** accepted on behalf of his Government the conclusions reached by the Committee on the undertaking of a direct contacts mission. He indicated that his country would fully collaborate with the Office in order to resolve this issue.

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

***Uganda*** (ratification: 1963). **A Government representative** noted the observation of the Committee of Experts and indicated that a review of the laws concerned was urgently required. In fact, such a review was currently underway including consultations with all stakeholders and social partners. The Government was applying a participatory approach, while respecting the legitimate interests of the parties involved. The Government representative stated that the laws cited by the Committee of Experts had been put in place at a time of political turmoil. These laws were undesirable and would be changed. In fact, they were among the legislation identified and subjected to action by the Uganda Law Reform Commission. However, the list of laws to be reformed was long and the need to address issues such as poverty and HIV/AIDS negatively affected the speed of this process. The Government representative urged the ILO to continue to provide technical assistance when called upon and expressed the Government's commitment that the situation would be improved before the Committee's next session.

**The Worker members** noted the information submitted by the Government representative on the measures taken to address socio-economic problems resulting from poverty and HIV/AIDS. They expressed the hope that the Government would demonstrate sufficient political will. While noting that this case reflected the economic situation of developing countries in general, they seized this opportunity to express their conviction that the Conference Committee was truly at the heart of the promotion of application of international labour Conventions and that peace was based on social justice. They equally underlined that the Committee of Experts, the membership of which included an Indian, a Pakistani, a Senegalese, a Brazilian and a citizen from the Dominican Republic, could not be accused of reflecting the exclusive perspective of a minority of developed countries, and that its conclusions could be considered as impartial by the Worker members, the Employer members and the Government members of the Conference. He further pointed out that the international labour standards, in an imperfect world, were aimed at improving the destiny of humanity as a whole. Their application required international action, under the aegis of the ILO, and thereby one could not claim that such action was only driven by a minority of member States.

Upon listening to the assurances of goodwill expressed by the Government representative of Uganda, the Worker members underlined that the Committee had already called on the Government to honour its obligations with regard to Convention No. 81 in 1989, 1990 and 2001. A joint ILO/UNDP mission had underlined in 1995 the insufficient resources allocated to labour inspection. The Government cited deficiencies in the infrastructure and resources of the country. The Worker members were of the view that it was incumbent on any government, on the basis of adequate legislation, to guarantee the efficiency, independence and objectivity of a labour inspection system which should report to a central authority accountable for its actions. The Worker members welcomed the acceptance of ILO technical assistance by the country.

**The Employer members** noted that Convention No. 81 was not one of the fundamental ILO Conventions. Nevertheless it was a very important instrument, as labour inspection was essential in order to gather accurate information on the situation in the country. Without such information governments had no basis for social policy measures, which appeared to have been the case in Uganda since 1982. He also recalled that an ILO/UNDP mission in 1995 had revealed several serious problems. From 1994 onwards the Government had decentralized the labour inspection system, leaving it to the districts whether or not to establish such a system. The districts were also not required to establish a labour inspection system in line with the Convention. As a result, in only 21 districts out of 45 a labour inspection system had been put in place, which meant that there was no effective national system in place, nor were national annual labour inspection reports available. Noting the explanation given by the Government representative that the problem was caused by a lack of resources, the Employer members referred to the recent economic growth mentioned in the Committee of Experts' observation. The central Government should therefore be able to become more active and to allocate the necessary resources. In conclusion, the Employer members noted that the Government

had not fulfilled its obligation under Convention No. 81 for some time and urged it to take the necessary measures to ensure full application of the Convention.

**The Employer member of Uganda** associated herself fully with the statement made by the Employer members. In addition, she observed that the problems regarding the application of the Convention resulted from the Government's policy of decentralization of services to the districts. This resulted in a contravention of the provisions of the Convention which require a central body responsible for labour inspection the inspections and the annual labour inspection reports would provide motivation for employers to put in place best practices with regard to working conditions, including occupational safety and health. A labour inspection central body should be established with the support of the ILO.

**The Worker member of Senegal** noted the commitment of the Government before the Committee. He recalled that the same question had already been raised in 1989, 1990 and 2001, in view of the numerous gaps in action taken by the public authorities. As a result, labour inspection in Uganda became practically non-existent. He added that the health initiatives by the Government, especially those of a pedagogic nature, to overcome the HIV/AIDS epidemic, were worth noting. However, the protection of workers could not be conceived without the existence of an efficient labour inspection system, and that it was incumbent on the public authorities to allocate the necessary resources to those true soldiers who monitored social law, in order to assist them in realizing their tasks. In Uganda, the decentralization of institutions had disastrous repercussions on the organization of inspection services, which needed to be addressed. It was necessary for the authorities of the State to develop its action based on labour inspection, in order to evaluate the degree of application of labour legislation in the country. It was therefore of paramount importance that the Government deploy all efforts to observe its obligations with respect to the Convention.

**The Government representative** reiterated his Government's commitment to organize adequate labour inspection. However, this was contingent on the economic and budgetary situation. He therefore reiterated his call for ILO technical assistance.

**The Worker members** welcomed the willingness expressed by the Government to bring legislation concerning labour inspections into line with Convention No. 81. They acknowledged that ILO technical assistance would be necessary. Recalling the obligations arising from Articles 4, 5, 6 and 10 of the Convention, they emphasized that the protection of workers should not be dependent on a country's prosperity and called on the Government to put in place labour inspection services in accordance with Convention No. 81.

**The Employer members** noted the lack of resources committed by the Government to a labour inspection system. So it was unclear whether the Committee could expect much in the near future. The Government should at least consider obliging the district authorities to have a local labour inspection system. ILO technical assistance was no substitute for the allocation of adequate domestic resources for labour inspection.

**The Committee noted the particulars submitted by the Government and the discussion which followed. The Committee noted that the Government had not provided the information requested. The Committee reminded the Government of its commitment made at its June 2001 session, to examine, together with all the social partners concerned and with the help of technical assistance, if needed, all aspects of the situation of labour inspection, on the one hand, and to initiate a review of decentralization measures on the other. The Committee once again expressed the hope that the Government would, without delay, provide the Committee with the required information as well as information which demonstrates compliance by the Government with its commitments in law, as well as in practice. The Committee noted that the Government requested the continuation of technical assistance and hoped, together with the workers' and employers' organizations, that it would put in place the required administrative and financial measures to ensure labour inspection in compliance with Convention No. 81.**

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

***Belarus*** (ratification: 1956). The Government has supplied the following information.

The Constitution and the law "on trade unions" of the Republic of Belarus establish trade union rights and freedoms in accordance with the principles laid down by Convention No. 87. Relations of the Government with the trade unions are based on the principles of social partnership laid down by the Labour Code, including the principle of independence and autonomy of the parties. The Government does not intervene in questions of internal management of the trade unions, which are regulated by the law "on trade unions" and their own statutes. Any such intervention in the activities of public associations, including trade unions, will be considered as a criminal offence.

In the Government's opinion, the elections of the Chairperson of the Federation of Trade Unions of Belarus were held in full conformity with the legislation and the Statute of the Federation. Mr. Kozik has been elected at the VIth plenary session of the Council on 16 July 2002 by 208 votes in favour, 10 against, and 8 abstentions. This decision has been confirmed by the IVth Congress in September 2002.

The Government delegates of Belarus noted the statement of the Workers' group concerning Belarus, which has been distributed among the participants of the Conference, and express disagreement with this document. The calls contained in this statement to put pressure on Belarus on the part of other countries and to suspend any technical cooperation with it could only contribute to the confrontation.

The questions raised by the Committee of Experts are being constantly in the focus of the Government's attention. The Government understands the need to improve the national legislation in the field of freedom of association. In May 2003, the Government has invited ILO Executive Director, Mr. Tapiola, to visit Minsk in order to discuss the outstanding issues with all interested parties.

**A Government representative** stated that the Government of Belarus considered questions related to the observance of the rights of workers and the creation of the necessary conditions so that workers could freely protect their interests as one of the priorities of its policy. Social partnership had been recognized in Belarus as an efficient form of interaction between the Government, employers' organizations and trade unions. The legislation governing social and labour rights had been drafted with the participation of trade unions and employers' organizations. The National Council on Labour and Social Affairs had been operating in Belarus as a consultative body, with the participation on an equal footing of the representatives of the Government and all-republic associations of employers and trade unions. The National Council had been considering the most important issues of social and economic policy. General agreements between the Government and all-republic associations of employers and trade unions had been concluded. At the present moment, the General Agreement for 2001-03 was in force in the country. With a view to the effective implementation of the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the previous year, within the framework of the National Council, a group of experts on the application of ILO standards was created, including representatives of the Ministry of Labour and Social Protection, the Ministry of Justice and of trade unions and employers' organizations. Tripartite consultative bodies and the regulation of labour relations by collective agreements had become widespread throughout the country. There were currently 16,993 collective agreements and 452 other agreements of various types.

She emphasized that freedom of association, including the right to organize in trade unions, was guaranteed by the Constitution. The rights of Trade Unions were set out in the Act on Trade Unions. This Act directly reflected the principles of Convention No. 87 concerning the freedom to establish and join trade unions, the right to formulate their statutes in full freedom, determine their structure, elect executive bodies and terminate their activities. In Belarus, workers actively exercised their right of association and over 90 per cent of workers were trade union members. The law accorded trade unions broad powers to protect the rights and economic interests of workers and ensured their active involvement in the life of the country and in the establishment of socio-economic policy. The trade unions were participating in the formulation of the state employment programme, the resolution of matters relating to social insurance and social security and labour protection. The trade unions also played an important role in the protection of individual rights of workers. Illegal restrictions on the rights of trade unions and the hindrance of their activities was not permitted. She emphasized that trade unions were independent in their activities, as set out in section 3 of the Act on Trade Unions.

Referring to the comments of the Committee of Experts, she emphasized that the number of issues raised by the Committee had raised difficulties for the Government from the legal point of view. These issues related to the activities not only of trade unions, but also of social associations as legal entities. She recalled the reference by the Committee of Experts to the provisions of Presidential Decree No. 2 of 1999 on certain measures to put into order the activities of political parties, trade unions and other social associations. This Decree prescribed the procedure for the registration of social associations in Belarus, including trade unions. The Decree set out clear requirements, which had to be met by a trade union in order to have the right to register as a legal entity. It also clearly

indicated the cases when trade unions could be refused registration. The registration authorities did not therefore possess the so-called "freedom of discretion" in the process of deciding whether to register a trade union or to refuse its registration. The refusal of registration could be challenged in the courts. For the registration of a trade union, it was necessary to submit the minutes of the constituent assembly and the charter, confirm the location of the executive board of the trade union (its legal address), indicate the number of founders of the association and to provide information on the organizational structure and a description of the insignia of the trade union. The same conditions had been established for all social organizations, including trade unions.

She emphasized that in Belarus all trade unions went through registration. The isolated instances of non-registration concerned first-level trade union organizations at the enterprise level, which had not been independent trade unions, but part of the organizational structure of a larger trade union. The organizational units of trade unions, as well as the trade union as a whole, were legal entities and, as such, were subject to state registration. The main reason for refusal to register trade unions was the absence of a legal address. Compliance with the other provisions of the registration procedure did not pose any practical difficulties. The main problem relating to the provision of the legal address related to first-level trade union organizations, which tended to indicate as their legal address the premises located at an enterprise, which could be provided by an employer, alongside means of communication and transport facilities. However, the legislation did not oblige the employers to provide premises to trade unions and this matter had to be resolved through negotiations between the employer and the trade union. In practice, cases of the refusal by employers to provide premises were rare.

In Belarus, all trade unions and over 26,000 organizational units of trade unions had been registered. Section 3 of Decree No. 2 provided that the activities of non-registered associations and those associations which had not been re-registered were prohibited. Section 3 also provided that the associations which were not re-registered were subject to liquidation according to the prescribed procedure, namely by court decision. Such a decision could be challenged in court. She emphasized that these provisions of the Decree had not been applied in practice because all trade unions had been re-registered. Decree No. 2 also provided that 10 per cent of the workers of an enterprise were necessary to create a trade union. The inclusion of this provision in Decree No. 2 was due to the necessity to resolve the issue of the representativeness of trade unions. She believed that, in the case of Belarus, where over 90 per cent of workers were trade union members, this provision was not excessive.

In March 2001, the President of Belarus had issued Decree No. 8 on certain measures aimed at improving arrangements for receiving and using foreign gratuitous aid. The creation of a transparent system for receiving and using such aid and an efficient system of control was particularly important in the countries of the former Soviet Union, which received such aid but which was not always used for the purpose for which it was intended. The Decree introduced the prohibition on using foreign gratuitous aid for conducting activities aimed at changing the constitutional order of Belarus, overthrowing state power and incitement to commit such acts, war propaganda or violence for political purposes, the inducement of social, nationalist, religious and racial hatred, as well as other acts prohibited by the legislation. In accordance with the provisions of the Decree, foreign gratuitous aid in any form could not be used, among other matters, for the preparation of a referendum, the organization of public meetings, rallies, street processions, demonstrations, pickets, strikes, designing and disseminating campaign material, as well as organizing seminars and other forms of mass campaigns for the achievement of the above results. The prescribed procedure for the registration of gratuitous aid was not difficult and seven applications by trade unions for the registration of foreign gratuitous aid had been submitted in 2002, of which none had been refused. She emphasized that after the adoption of Decree No. 8 there had been no cases of liquidation of trade unions in connection with the violation of the procedure on use of foreign gratuitous aid. Moreover, the provisions of Decree No. 8 had not prevented cooperation by the Government and the social partners with the ILO.

Presidential Decree No. 11 on certain measures aimed at improving the procedure for organizing public meetings, rallies, street processions, demonstrations, other forms of mass campaigns and picketing in the Republic of Belarus, had been adopted in May 2001 and was intended to prevent mass gatherings having any serious consequences, particularly when they lost their peaceful character. Decree No. 11 provided for the possibility of the dissolution of organizations which did not ensure the orderly conduct of mass gatherings where the number of participants exceeded 1,000 persons and where substantial damage was caused. However, such dissolution could only be conducted in accordance with the procedure prescribed by the legislation, namely by court decision. She said that, since the adoption of Decree No. 11 of 2001, there had been no cases of the dissolution of trade unions on these grounds.

With reference to the comments of the Committee of Experts concerning the recent elections in the Federation of Trade Unions of Belarus, the largest trade union association of the country, she said that the Government had carefully studied all the facts relating to the election of the chairperson of the Federation and had concluded that the elections had been conducted in full conformity with the legislation and the statutes of the Federation. The election of Mr. Kozik as chairperson had been conducted in an open and transparent manner and had been confirmed by the Fourth Congress of the Federation of Trade Unions of Belarus in September 2002, the delegates to which had been elected under the previous administration of the Federation. She was aware that the change in the balance of power inside the trade union, resulting in the promotion of a number of trade union officials and the removal of others, had objectively created dissatisfaction in certain quarters. In her view, this was the primary cause of the complaints submitted to the ILO after the elections.

She emphasized that the Government did not interfere in the internal administration of trade unions. These matters were governed by the Act on Trade Unions and by the statutes of the trade unions. In her view, the legal system of Belarus provided all the necessary safeguards for the ordinary members of trade unions and their officials to protect their rights, including the right to recourse to the respective judicial or other competent bodies. She emphasized that the legislation of Belarus established criminal liability for interference in the activities of social associations, including trade unions. In accordance with section 194 of the Criminal Code of Belarus, impeding the legitimate activities of social associations or interference in their legitimate activities, was punishable by fines, the deprivation of the right to occupy certain positions, or corrective labour for a period of up to two years.

The right of workers to strike was established by article 41 of the Constitution of Belarus and by the Labour Code. Belarus had ratified a number of international legal instruments which guaranteed the right of workers to conduct strikes in accordance with national legislation. The general rules for the resolution of collective labour disputes were also prescribed by the Labour Code of Belarus, which entered into force on 1 January 2000. In her view, the provisions of the Labour Code governing the conduct of strikes took into account the interests of the social parties as well as those of society as a whole. The Labour Code provided for the establishment in the initial stages of a collective labour dispute of a conciliatory commission composed of the representatives of the parties to the dispute, the presence of a minimum number of the workers concerned and the holding of a secret ballot on the calling of the strike, the prior notification of the employer, the assurance for the period of the strike of minimum essential services and the prohibition of forcing workers to participate in a strike or to refuse to participate in a strike. The legislation of Belarus did not provide for compulsory arbitration or the requisitioning of labour. Any decision to declare a strike illegal had to be adopted by the courts.

In the process of the adoption of the Labour Code, the Government of Belarus had taken into account the comments of the Committee of Experts and the Committee on Freedom of Association with respect to the types of enterprises in which strikes were prohibited. However, with regard to the comments of the Committee of Experts concerning section 6 of the Labour Code, in her view there had been a translation error. In the report on Convention No. 87 transmitted to the ILO in 2002, the Government indicated that section 6 dealt not with workers, as indicated by the Committee of Experts, but with members of supervisory and other executive bodies of organizations such as social associations and foundations. These persons were not workers and they performed their duties either on the basis of a civil law contract or on a voluntary basis.

She expressed the hope that the discussion of the comments made by the Committee of Experts would be objective and devoid of political rhetoric. She expressed her disagreement with the statement by the Workers' group concerning Belarus which had been distributed among the participants at the Conference. The demands for other countries to put pressure on Belarus and the suspension of all technical cooperation by the ILO with Belarus contained in this statement, in her view, could only contribute to confrontation. This approach was not characteristic of the ILO or its tripartite bodies.

Finally, she emphasized that the questions raised in the comments of the Committee of Experts had been the object of constant attention by her Government. She understood the need to improve the national legislation in the area of freedom of association and to take further steps in this direction. In 2003, the Government had

requested ILO assistance with the draft Law on Employers' Associations, and the ILO had agreed to provide such assistance. In May 2003, the Government had extended an invitation to Mr Tapiola, Executive Director of the ILO, to visit Minsk and to discuss the outstanding issues in the area of freedom of association with all the interested parties. She was confident that, despite all the difficulties, the Government would be able to find an optimal solution.

**The Employer members** recalled that the Committee had examined this case fairly frequently in the past, and most recently in 1997 and 2001. In 2002, the Government had been invited to discuss the case, but had inexplicably refrained from doing so, even though it had been present at the Conference. This had to be viewed as a sign of lack of interest and even non-compliance.

With regard to the comment made by the Committee of Experts on Presidential Decree No. 2 of 1999, requiring the re-registration of trade unions, they noted the statement by the Government representative that almost all trade unions had been re-registered and that only minor problems still persisted in this respect. However, they pointed out that, even if the requirement for registration applied to all trade unions, this did not mean that it was in accordance with the Convention. The Government representative had indicated that most of the problems arising in this respect concerned the requirement to indicate the legal address of the organization. The Employer members recalled in this respect that workers' and employers' organizations were different from other associations in that they enjoyed the protection afforded by Convention No. 87. The reference made by the Government representative to equality of treatment with other associations in this respect was not therefore relevant to the discussion and there was a clear violation of the Convention on this matter.

With regard to the minimum membership requirement for the establishment of an enterprise trade union, which was set at 10 per cent of the workers in the enterprise, the Employer members emphasized that this was not a matter to be regulated by the State, but should be left to workers' organizations themselves to settle. They added that obstacles of this nature should not be used to prevent workers' organizations from being consulted and having the opportunity to participate in bodies which discussed matters of concern to them. They therefore called upon the Government to analyse in depth the comments of the Committee of Experts on this matter and to take the necessary measures.

On the subject of the comments made by the Committee of Experts concerning the right to strike, the Employer members recalled their repeated affirmations that Article 3 of the Convention did not provide a legal basis for the right to strike. However, they added that the interference by the Government in trade union elections, as confirmed by the Committee on Freedom of Association in its conclusions on Case No. 2090, constituted an intolerable interference in the internal affairs of trade unions. Moreover, the Committee of Experts had rightly indicated that the restrictions placed upon trade unions from receiving financial assistance from abroad for their activities was a violation of the Convention, irrespective of the purpose for which such assistance was provided.

In conclusion, the Employer members noted that after many years of examining the case it was still their impression that the Government was turning a deaf ear to the need to make changes. The statement by the Government representative showed that the Government still considered itself to be responsible for the internal affairs of trade unions. The Government was therefore far from complying with the letter and spirit of the Convention and should be called upon to change its opinion with regard to these clear problems of non-compliance with its obligations under the Convention.

**The Worker members** indicated that since 1997 the Committee had been examining the case of the violations of trade union rights in Belarus. Unfortunately, last year the Government had declined any dialogue with the Committee. They hoped to be able to engage in a dialogue with the Government this year. In its comments, the Committee of Experts raised the following points: (i) the violation of Article 2 of the Convention concerning the right of workers and employers to establish organizations of their own choosing without prior authorization; (ii) the violation of Article 3 of the Convention concerning the right of trade unions to organize their activities without interference; and (iii) the violation of Articles 5 and 6 regarding international affiliation.

With respect to the right of workers and employers to establish organizations of their own choosing without prior authorization, the Committee of Experts had expressed its concern, especially with regard to the obligation to provide a legal address, the prohibition of any activity by non-registered associations (section 3 of Presidential Decree No. 2) and the rule imposing upon organizations a minimum membership requirement of 10 per cent of workers at enterprise level. The Committee of Experts had also called for the right to organize to be guaranteed for the members of advisory councils and other executive bodies of organizations.

With regard to the right of workers' organizations to organize their activities without interference, the Committee of Experts had indicated, first, that it was necessary to amend the Labour Code to authorize the exercise of the right to strike, and also to amend paragraph 1.5 of Presidential Decree No. 11 of 7 May 2001, which provided for the dissolution of a union in the event of problems in the course of a public demonstration. To this effect, the Committee of Experts had recalled that the dissolution of a trade union was an extreme measure which, when adopted for reasons of a picket action resulting in the disruption of a public event, the temporary halting of a service or the disruption of transport, was not in conformity with the right of workers' organizations to organize their activities in full freedom. Secondly, the Committee of Experts had referred to a complaint examined by the Committee on Freedom of Association concerning interference by the public authorities in trade union elections. This practice constituted a serious violation of the right of workers' organizations to organize their activities in full freedom. Thirdly, the Committee of Experts, referring to its General Survey of 1994 on freedom of association and collective bargaining, indicated that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. Employees of the National Bank therefore had the right to have recourse to strike action without incurring penalties.

With respect to the right of international affiliation, the Committee of Experts had recalled that section 388 of the Labour Code and Decree No. 8 of March 2001 were not consistent with the provisions of Convention No. 87. The Worker members indicated that the situation in Belarus was worsening. Interference by the authorities in the activities of trade unions and the harassment to which trade unionists were subjected were unacceptable. The Government had to demonstrate the genuine political will to seek concrete solutions to the violations of trade union rights in the country. In conclusion, they emphasized that this was a case of continued failure to implement the Convention.

**The Employer member of Belarus** indicated that he wished to discuss several aspects of tripartite relations in Belarus. He welcomed the attitude of the Government towards the creation of the conditions for social partnership. He emphasized the importance of establishing a unified legislative basis for the operation of workers' and employers' organizations and he indicated that a working group had been created to examine the draft law on employers' associations. This draft was expected to be submitted to Parliament in November 2003. He regretted that the work on this law had been going on for more than six years and that it had not yet been adopted. The absence of such a law created certain problems for the operation of employers' associations in Belarus.

He indicated that the activities within the context of the tripartite relations were increasing. The general agreement concluded for three years was expiring in 2003 and the conclusion of a new agreement was expected at the end of this year. He highly appreciated the role of the ILO in the development of social partnership and its technical assistance and he called upon the ILO to conduct a legal evaluation of the draft law on employers' associations. He emphasized the importance of establishing a clear legislative basis and of interaction between employers and the Government. Finally, he supported the proposal to invite Mr. Tapiola to visit Belarus.

**A Worker member of Belarus** expressed his gratitude to the Committee for examining the issue of the protection of workers' rights in his country. Referring to the statement by the Government representative, he emphasized that the measures taken by the Government had not been the result of its good will, but rather of the decisive work of the Federation of Trade Unions, which had 4 million members.

He indicated that trade unions in Belarus had managed to reestablish their financial situation. The Government had decided that membership fees could be collected by all methods, and should be transferred ahead of other payments. The protection of trade union officials had also been improved, as their employment could no longer be terminated without the consent of a higher trade union body. Trade unions had been afforded the right to office space and means of transport.

He categorically refused to accept the conclusions of the Committee of Experts concerning the alleged lack of independence of the Federation of Trade Unions. The Federation had acted solely on the basis of its charter and the will of its members. The chairperson of the Federation had been elected without any violations of the law. These elections had been open and transparent, as confirmed by the presence of independent observers. The Government had made a significant step to strengthen the trade union movement and hoped that the Government would continue in this direc-

tion. Should the Government deviate from this route, the trade unions would take all legitimate measures. However, it was incorrect to say that nothing had been done by the Government. The Government should complete the process that it had already started. He emphasized that the trade unions were ready to help the Government and that he opposed the adoption of measures to exert pressure at the international level and to suspend technical assistance. Such measures could adversely affect the 4 million members represented by the trade union.

**The Worker member of the Russian Federation** indicated that he was speaking at the request of the Russian delegation of workers, which included the heads of all four representative trade union centres covering almost all trade union members in the country, 36 million of which were members of his Federation of Independent Trade Unions of Russia. Russian trade unions had been closely monitoring events in Belarus relating to the application of the provisions of ILO Conventions and, particularly, Convention No. 87. The Russian Federation and Belarus were going through the process of creating a unified State, and it made a significant difference for Russian trade unions if in one part of this future State the rights of workers were violated and trade union freedoms were not observed.

He had listened with great attention to the statement by the Government representative of Belarus and those of the other members of the Committee. As a member of the Governing Body, he had attended the discussion of this case in March 2003. He regretted that the majority of the conclusions and recommendations in the previous reports of the Committee of Experts had not yet been implemented, even though the ILO had been following the case for a number of years. He added that there had been further instances of violations of trade union rights and interference by the State in their internal affairs, such as recent prohibition of the publication of the trade union newspaper "Solidarity". He welcomed any effort aimed at the elimination of violations of the rights and freedoms of the trade unions in Belarus. However, he called for the Government to devote its considerable energies to improving the situation, rather than persistently violating trade union rights.

Russian trade unions were confident that all the provisions of Convention No. 87 would be applied by the Government of Belarus without any exceptions. They were also convinced that workers and trade unions were the first victims of violations and failure to comply with all ILO Conventions, because they were the most vulnerable partners in social dialogue. He hoped that the consideration of this case would lead the Government to pay greater attention to cases of the violation of this fundamental Convention and would help it adopt effective measures for the eradication of these violations as soon as possible. He also hoped that, as a result of conclusions adopted by the Committee, a climate of the real observance of the rights and freedoms of all trade unions without exception would be established in Belarus.

**The Worker member of Germany** said that the Government of Belarus had taken every available measure to undermine the independence of the trade union movement in the country. The action taken included administrative and legal threats, economic pressure, the threat of dismissal and intimidation. The persistent interference by the Government in the internal affairs of trade unions was part of a deliberate policy to wear down the trade unions newly established in 1991 and to take control of organizations representing 4 million workers. Since July 2002, high-ranking trade union officers had been replaced by nominees from the Office of the President, the secret service and the customs and financial authorities. As a result of the decision in December 2001 to cancel the check-off of trade union membership fees, the financing of trade unions had become critical, and trade union employees had not been paid. The Government had coerced trade unionists to establish "yellow" trade unions as the only way of keeping their jobs. In the meantime, the country's independent trade unions had been excluded from the examination of new draft legislation and had suffered a campaign of defamation from the state-controlled media. In 2002, the Government had initiated a campaign to prevent the re-election of any trade union leaders who were in favour of an independent Federation of Trade Unions, particularly through the threat of losing their jobs. The chairperson of the Federation had been replaced by a high-level official of the State, who had immediately re-established the check-off system and tripartite dialogue.

The Government had since focused attention on any organizations which were still independent of state control. One important instrument in this respect was the need to provide an official address for the registration of an organization. As most trade unions were based at the enterprise, and the use of enterprise addresses needed the approval of the employer, the establishment of trade unions was dependent upon approval by employers. Trade unionists who were still active had been dismissed and not reinstated, as demanded by the Committee on Freedom of Association. A Decree adopted in November 2002 had given the Federation of Trade Unions the exclusive right to bear the name of Belarus and the Minister of Industry had declared that the leaders of any trade unions which were still independent were a problem which needed to be solved within two months. Many trade union members had been placed under pressure to resign from independent unions. He emphasized that the systematic action taken against the independent trade unions and their leaders was pulling the country into economic crisis and isolation. The Committee should clearly emphasize the violations of Convention No. 87 in its conclusions and he called upon all the member States of the ILO to take appropriate steps to assist in the re-establishment of freedom of association in Belarus.

**The Worker member of France** noted that the statement by the Government representative of Belarus confirmed the grave irregularities, in law and in practice, observed in the report of the Committee of Experts and the conclusions of the Committee on Freedom of Association, especially as regards the right of trade unions to organize their activities in full freedom, the right of free political expression, public demonstration and the right to strike. Yet, these rights were an integral part of the constitution in democratic countries.

The exercise of freedom of association was not protected in Belarus, as illustrated by several legislative provisions. For instance, the law permitted the authorities to control the organization of unions, their operation and activities, which was contrary to Convention No. 87. Moreover, the dissolution of a trade union appeared to be the prescribed sanction for any type of infringement. In addition, the existence in certain legal texts of terms sufficiently vague, such as "social hatred" or "massive agitation", allowed for the dissolution of independent trade unions which had managed to overcome the obstacle of registration.

It appeared that the control exercised by public authorities over trade unions and organizations of civil society was aimed at preventing unions from furthering their claims on important questions, notably in respect of wages. Furthermore, the support from international workers' organizations was also closely controlled and prohibited. The Government representative seemed to consider the restrictions contained in the law to be normal. By accusing the unions, the Committee of Experts and the ILO of exerting pressure on her Government, she had shown contempt and lack of consideration for the Committee, thereby repeating the attitude shown the previous year when the Government had declined to engage in dialogue with the Committee. It was urgent for the Government to cease controlling the trade unions in an abusive manner. He concluded by indicating that the Committee's conclusions had to be very clear to bring about the application of Convention No. 87 in both law and practice.

**The Worker member of Romania** stated that the case of Belarus was a typical case of the repeated violation of Convention No. 87. Presidential Decree No. 2 of 26 January 1999, section 3 of which prohibited any activity by non-registered associations and set a minimum membership requirement of at least 10 per cent of workers at the enterprise level, had not yet been repealed. This measure was not in conformity with Article 2 of Convention No. 87, which recognized the right of workers and employers to establish organizations of their own choosing without prior authorization.

The Committee of Experts had also noted the violation of Article 3 of Convention No. 87. In fact, the provisions of the Labour Code, which had not been amended, set legislative limitations on the right to strike when the rights and freedoms of third parties were prejudiced, in particularly: (i) the provisions of sections 388 and 399; (ii) the requirement to notify the duration of a strike (section 390); and (iii) the obligation to ensure minimum services during the period of the strike.

In Belarus, the right of workers' organizations to organize their activities in full freedom was not guaranteed. By way of illustration, reference could be made to paragraph 1.5 of Presidential Decree No. 11 of 7 May 2001 which provided for the possibility of dissolving a union in the event that an assembly, demonstration or strike picket resulted in the disruption of a public event, the temporary suspension of an organization's activity, or the disruption of transport. The dissolution of a trade union was an extreme measure contrary to the right of workers' organizations to organize their activities in full freedom. The interference of the public authorities in recent trade union elections also constituted a serious violation of Convention No. 87. In addition, the right to organize and the right to strike were not guaranteed for certain categories of government employees and other persons employed in the public service. He expressed the firm hope that the Government would take the necessary measures in the near future to bring its legislation into full conformity with the provisions of the Convention.

**Another Worker member of Belarus** described how, against a background of the persistent violation of trade union and workers' rights, he had been removed from his position as chairperson of the Federation of Trade Unions, along with colleagues, such as Mr. Boukhvostov, the chairperson of the trade union of agricultural machinery production workers. Following concerted pressure from the Ministry of Industry and employers, they had been removed from office and their places taken up by former employees of the Office of the President, the secret services and the customs and tax authorities. He described in detail the measures taken to interfere in the trade union election processes with a view to the domination of the trade union movement and its integration into the state machinery. He also described how the President of the country had accused certain independent trade union leaders of being constantly involved in politics and acting as the opposition. Pressure had been placed upon individual leaders to create "yellow" trade unions which were intended to cover all the workers of industrial enterprises. This process had culminated in the extraordinary congress of the Federation of Trade Unions, which had been notable for the participation of the Minister of Industry and the directors of large enterprises. One effect of this process was that the Federation had decided to revoke its support for Case No. 2090 to the Committee on Freedom of Association. Clearly, the Federation no longer wished to draw attention to the widespread and persistent violation of human rights in his country. The interference by the Government in the internal affairs of trade unions was so clear in his country that no one could possibly deny it.

**The Government member of Cuba** stated that the comments made by the Worker and Employer members of Belarus indicated that a certain progress had been made in the country which needed to be promoted through dialogue and cooperation, and not through confrontation, interference and pressure. The Cuban delegation observed the strange coincidence that the accusations against Belarus were similar to the campaign led by centres of power which controlled NGOs and trade union confederations. Certain comments made by the Committee of Experts on the case of Belarus relating to Convention No. 87 were contradictory and questionable. The Committee of Experts had arbitrarily questioned the legislative limitations to the right to strike established in the interests of the rights and freedoms of other persons. These limits were fully compatible with international law, since the Universal Declaration on Human Rights and other instruments clearly established that the rights and freedoms of certain parties could not be exercised in a way that ran counter to the rights and freedoms of others. The Committee of Experts referred to the need to avoid interference by the public authorities in trade union activities, but should also refer to the need for workers to be independent from foreign governments. He also referred to the questions raised by the Committee of Experts on the legal obligation to ensure minimum services during a strike. This element was included in the legislations of nearly all countries in the world, including the industrialized countries, and had been frequently used by various countries which did not appear on the list of the cases and were not subject to comments. The right to strike could not be exercised without certain restrictions, such as the need to guarantee essential minimum services in order to ensure respect for the rights of others such as a minimum medical service which guaranteed the right to life, without which no other right could be enjoyed. Cuba hoped that the Conference Committee would take these comments into account. He called for greater objectivity by the Committee of Experts and the avoidance of the use of technical pretexts to promote hidden objectives.

**The Government member of Denmark, also speaking on behalf of the Government members of Finland, Iceland, Netherlands, Sweden and the United Kingdom**, welcomed the fact that the Government representative had been able to attend the present meeting of the Committee, especially following the non-appearance of her delegation the previous year, which had been particularly surprising in view of the election of the Government of Belarus to the Governing Body for a three-year period at that same time. She noted the decision by the National Council to establish a tripartite group of experts on the application of ILO standards and hoped that the work of this group would speed up the process of bringing the situation in Belarus into conformity with the Convention. She also noted the Government's invitation to Mr. Tapiola, ILO Executive Director, to visit the country to discuss the outstanding issues with all the interested parties. Nevertheless, she reiterated her concern about the serious violations of trade union rights in the country. She therefore requested the Government to amend Presidential Decree No. 2 of 1999 so that section 3, banning the activities of non-registered associations, did not apply to trade unions at any level of their organizational structure. She also called upon the Government to take the necessary measures to amend the legislation on the right to strike as soon as possible in order to ensure the right of trade unions to organize their activities in full freedom in accordance with the Convention. She further requested the Government to amend Decree No. 8 of 2001 and section 388 of the Labour Code so that national workers' and employers' organizations could receive assistance, including financial assistance, from their international or foreign counterparts in pursuit of their legitimate aims. Finally, she urged the Government to comply fully with the requests made by the Committee of Experts and to keep it informed of all the measures taken to bring the situation into conformity with the Convention.

**The Government member of the United States** stated that she wished to add the concerns of her Government to the sentiments of serious concern already expressed by other speakers. In fact, her Government had been concerned with this situation for some time, as witnessed by the decision in 2000 to remove Belarus from its trade preference programme on the grounds that trade union rights had not been respected and independent trade unions had been suppressed. This concern had by no means diminished.

She was concerned by the Government's attempts to transform the trade union movement in Belarus into an instrument for the pursuance of its own political aims. She referred, in particular, to attempts to remove the legitimately elected leadership of unions in an effort to bring them under government control, and to the regular and systematic interference in and obstruction of trade union activities. The evidence of the Government's serious and continuous violations of Convention No. 87 had been clearly laid out in the reports of the Committee of Experts and the Committee on Freedom of Association. In March 2003, the Committee on Freedom of Association had indicated its urgent concern about the trade union situation in Belarus and its Chairperson had met the Deputy Minister of Labour. She indicated that the Government had recently invited a high-ranking ILO official to Minsk to discuss the outstanding issues with all interested parties. She hoped that these discussions would include individuals and organizations that genuinely represented the workers of Belarus and that they would lead to real improvements in both law and practice. In the meantime her Government would monitor the situation with continued concern.

**The Government member of the Russian Federation** drew the attention of the Committee to the fact that around 90 countries had been mentioned in the report of the Committee of Experts as having problems with the application of Convention No. 87. The task of improving the legislation was very important for Belarus as well. He indicated that the Government of Belarus recognized the importance of this problem. The personal presence of the Minister of Labour in the Committee reflected the importance attributed by the Government to this matter and its efforts to find a constructive solution. The Government of Belarus had been supported by the Federation of Trade Unions and the association of employers. He welcomed the invitation to Mr. Tapiola to visit Belarus. He was convinced that the development of cooperation between the Government of Belarus and the ILO would contribute to the alleviation of the concerns of the Committee of Experts. He did not share the view of the Worker member of the Russian Federation that there had been no positive changes in Belarus and emphasized that such positive changes had in fact taken place. He supported the appeals to the Government to strengthen social dialogue and asked the Committee to make a recommendation which would not create obstacles for constructive dialogue within Belarus, as well as between Belarus and the ILO.

**The Government member of Germany** noted the apparent willingness of the Government to engage in further dialogue. However, he said that he found that the statement by the Government representative was unconvincing in its substance. He endorsed the statements made by the Employer and Worker members and the Government members of the Nordic countries and pointed to the inconsistency of the Government's indications made in document D.11 to the effect that the elections of the chairperson of the Federation of Trade Unions of Belarus were held in full conformity with the legislation and the statutes of the Federation, while in its statement in the fourth paragraph it admitted that there was a need to improve the national legislation in the field of freedom of association. Recalling the importance attached by the Committee to the willingness of governments to accept the observations of the Committee of Experts and to comply with their obligations, he called upon the members of the Committee to compare the lack of will shown by the Government of Belarus with similar cases that it had examined recently and to draw the appropriate conclusions. All the examinations by the supervisory bodies of this case had shown the Government's lack of understanding of the requirements of the Convention.

**The Government representative** replied that in her previous statement she had explained in detail the position of the Government. She reiterated that her Government was prepared to cooper-

ate with the social partners and with the ILO and that she had listened attentively to all the statements by the members of the Committee. The positive proposals would be taken into account in the action taken by the Government. However, several statements did not reflect the real situation in the country. She emphasized that the Government was ready to improve the legislation and she hoped that the discussion of the case in the Conference Committee would help in this work.

**The Worker members** stated that the Committee had held an important discussion on a serious and unacceptable situation regarding the violation of freedom of association in Belarus. Nevertheless, the Government refused to accept its responsibility in this respect. The Worker members proposed that the conclusions on this case should be included in a special paragraph of the Committee's report.

**The Employer members** noted that a number of interesting facts had been highlighted during the discussion which served to supplement the information provided in the report of the Committee of Experts. However, all of this information only served to confirm the picture that they already had of the situation. Although the Government representative had expressed the readiness of her Government to improve the situation, she had provided no information in her opening statement concerning any measures taken for that purpose. The Employer members emphasized that for many years the situation had been in need of great improvement. They therefore agreed with the Worker members that the Committee should include its conclusions on this case in a special paragraph of its report.

**The Government representative** asked the Committee to take into account the ongoing consultations with the ILO and the invitation extended to Mr. Tapiola, Executive Director of the ILO, to visit Belarus. She indicated that the fact that the legislation covered not only trade unions, but also other associations, created additional difficulties in the work of the Government. She asked the Committee not to place its conclusions in a special paragraph of its report.

**The Committee noted the oral and written information provided by the Government representative and the discussion that followed. The Committee noted that the comments of the Committee of Experts referred to a number of divergences between law and practice and the Convention. In particular, the Committee noted that the law and various legislative decrees placed important restrictions upon the right of workers and employers to establish organizations of their own choosing without prior authorization and the right of such organizations to operate without interference by the public authorities, including the right to receive foreign financial assistance for their activities.**

**The Committee also noted with deep concern the conclusions of the Committee on Freedom of Association in Case No. 2090 concerning the interference by the public authorities in trade union elections, in violation of Article 3 of the Convention, and deeply regretted to note the statements made before the Committee to the effect that its interference in the internal affairs of trade unions was continuing. In this respect, the Committee firmly urged the Government to take all the necessary measures in the near future to bring an end to such interference with a view to ensuring full compliance with the provisions of the Convention in both law and practice.**

**While noting the Government's statement that it was paying particular attention to the comments of the Committee of Experts and that it had invited a high-level official from the Office to visit the country, the Committee regretted to recall that the Government had been referring for several years to the need for changes in the legislation and that up to now it had not been able to note real progress in this regard. It therefore expressed the firm hope that all the necessary measures would be taken in the very near future to guarantee in full the rights afforded by the Convention to all workers and employers, particularly with regard to the right of their respective organizations to organize freely their internal affairs and to elect their leaders without interference by the public authorities. The Committee urged the Government to provide detailed information in the report due so that it could be examined by the Committee of Experts at its next session and expressed the firm hope that next year it would be in a position to note real progress achieved in relation to this case. The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case for continued failure to implement the Convention.**

***Cameroon*** (ratification: 1960). **A Government representative**, with reference to the comments made by the Committee of Experts on the application of Convention No. 87 in his country, denied the existence of any restrictions on freedom of association. He said that the Convention was indeed applied in Cameroon and that freedom of association was a reality. He recalled that the ten provinces and 58 departments which made up his country were covered by workers' organizations, which were coordinated at the provincial level by a vice-president and at the departmental level by a departmental confederation. The country currently had over 580 first-level unions affiliated to two major confederations, which were amongst the most representative. Of the 20 national collective agreements, 11 had been negotiated and signed by these two confederation, while five others were nearing completion. An establishment agreement had been concluded on 6 March 2002, in the context of the construction project of the Chad-Cameroon pipeline, with the co-contractor Doba-Logistic Cameroon. Industrial action had been taken against the Government on several occasions concerning, among others, the above pipeline, privatization, the wage claims of public servants, public hospitals and public education establishments. This all showed that freedom of association was not subject to any restriction and that trade union activists were not muzzled.

He said that what appeared to be causing a problem was the fact that these practices were not enshrined in the law. It appeared that it was necessary to repeal Act No. 68/LF/7 of 18 November 1968 and its implementing Decree No. 69/DF/7 of 6 January 1969. Moreover, it would be necessary to repeal section 6(2) of the Labour Code respecting the recognition of the legal existence of a trade union, as well as sections 6 to 11 of the Labour Code respecting the documents to be supplied for the registration of a trade union. However, he maintained that these amendments would have no effect on freedom of association. He drew attention to the origins of the 1968 Act under the former Federal Ministry of Territorial Administration, now the Ministry of Territorial Administration and Decentralization, and indicated that it had been adopted at a time when the concepts of peace and stability were still nebulous. At that time, its scope covered not only labour matters, but also anything related to the security of the State. He added that the 1968 Act and the Act of 1992 issuing the Labour Code were the responsibility of two different ministerial departments. All of this added to the complexity of the situation. The advent of a multi-partite system in 1990 had meant that it was possible to hold a vote and enact a whole series of laws setting forth public freedoms. The 1968 Act was now obsolete and completely unknown. With regard to the above sections of the Labour Code, he informed the Office and the Committee of Experts of the fact that the file, including the reservations expressed recently by the USLC, had been transmitted to the National Advisory Labour Commission for advice before being forwarded to the Commission for Legislative Reform. In conclusion, he said that in his opinion the problem did not consist of the failure to apply or to comply with the Convention, but at the level of the deletion of the above sections of the Labour Code. In this respect, he said that the procedures were under way and results were a waited.

**The Worker members** emphasized that freedom of association in Cameroon had been the subject of several observations by the Committee of Experts since 1989. Furthermore, the present Committee had considered the case of Cameroon in 1994, 1996, 1998, 1999 and 2000. The circumstances had hardly changed for over ten years and the Committee of Experts had commented on the following points: the legal existence of trade unions or occupational associations of public servants; the possibility of judicial proceedings against the founders of a trade union which had not been registered; prior authorization from the authorities for affiliation to an international organization; and excessive formalities allowing for wide discretion with regard to the registration of trade unions. The Worker members also recalled that the Committee had included a special paragraph on this case in its conclusions in 1999 and 2000. In 2000, the Committee had suggested that an ILO mission should visit the country. This mission had taken place in April 2001 in order to provide technical assistance with respect to the outstanding legal issues. However, the Worker members, in the same way as the Committee of Experts, noted that no information had been supplied on any progress made. They reiterated their request for the Government to provide the Committee with information on the progress made following the technical assistance mission and in response to the comments of the Committee of Experts. They noted that certain practices appeared to be no longer in existence. However, they recalled that it was the Government's responsibility, on an urgent basis, to ensure in a clear and unequivocal manner that, in addition to practice, the laws were also in conformity with the Convention. In conclusion, the Worker members regretted the lack of progress and the Government's continued failure to comply with its obligations.

**The Employer members** recalled that this case had been examined by the Committee for a long time, and most recently in 1999 and 2000. Following a three-year break in the Committee's examination of the case, it was disappointing that the desired improve-

ments did not appear to have materialized. In the same way as on previous occasions, the Government representative had once again denied that certain of the comments of the Committee of Experts were correct, or had indicated that changes in the national law meant that they were no longer valid, or had cited certain difficulties in the process of bringing the national legislation into line with the requirements of the Convention. The Employer members regretted that they had heard similar statements on many occasions in the past and were distressed that the case had dragged on for so many years. With regard to Act No. 68/LF/19 of 19 November 1968, under which the existence in law of a trade union or occupational association of public servants was subject to prior approval by the Minister, they noted that despite the constant indications that the situation was about to be changed, the Committee of Experts had received no information on any actual changes. With reference to Decree No. 2000/287, which offered broader possibilities for the release of public servants for trade union activities, they acknowledged that this amounted to some progress, but pointed out that prior authorization was still required for the establishment of trade unions in the public service and that a further amendment would be required to the legislation to allow their affiliation to international organizations. In conclusion, they deplored the fact that the Government representative appeared to prefer to provide indications which obscured the situation rather than clarifying it. They deeply regretted that, despite the examination of the case for such a long period, no progress had been made with regard to a very clear violation of the principles of freedom of association.

**A Worker member of Cameroon** indicated that the Government, without modifying the laws on prior authorization of trade union organizations, had nevertheless facilitated this aspect in practice. However, this improvement should no longer be considered as a favour and should be definitely set out in the law. Furthermore, the requirement of prior authorization for the affiliation of a trade union to an international organization was set out in emergency legislation, dating from the turbulent period following the independence of Cameroon. It was now appropriate to repeal this law in order to adapt to a time of peace, which was so rare in Africa and was priceless. He emphasized that the trade unions placed great expectations in their effective contribution to the development, as well as their tripartite participation in the harmonization of African labour law. He indicated in this connection that the trade unions had been regularly invited to be involved in this work, and he hoped that, as in the case of the countries of the European Union, a supranational instrument for the harmonization of labour law would definitively correct all the existing imperfections in national law.

He indicated that the organizations of public servants now had the right to exist. However, it was necessary to remain vigilant so that their existence contributed to the strengthening of social dialogue in Cameroon. Finally, he invited the Committee to assist the Government of Cameroon in making further progress so that the laws under discussion would no longer be considered as a favour or as a sword of Damocles hanging over the heads of trade union organizations.

**The Worker member of France** stated that despite the fact that the Minister of Labour of Cameroon had recently been appointed, in this Committee he embodied the continuity of the State. In fact, it appeared that the Government believed that by changing the Minister of Labour every three years it would restart its international obligations from zero. With regard to the imprisonment of trade union members working for the Cameroon railway company (CAMRAIL), an enterprise of the French group BOLLORE, she said that the director-general of this company maintained a climate of trade union repression in his enterprise. In 2002, he had stated that if possible he would fire all trade union members. Today, it had to be said that he was using devious methods to achieve what he was not able to do directly. Over the past two years, the old railway equipment had caused several derailments. He claimed that the trade union members of CGT-liberté had themselves caused these derailments, but she emphasized that affiliates of the ICFTU did not resort to such techniques. On 2 February 2003, following these accusations, 14 trade union members had been imprisoned. On 13 February, as a result of the intervention of the ICFTU, the ILO and Force Ouvrière, 13 of them had been released. The last one had been released only on 20 February 2003, despite his health problems. On 2 April 2003, the wife of this trade union member, an employee of CAMRAIL, had been informed that she would be transferred 300 km from Yaoundé. This woman, the mother of a child of 1½ years of age, had refused to move. She had been dismissed following her refusal, and on 14 April, 12 days after her dismissal, she had been accused of stealing 14 million CFA francs. Following this accusation, she had been arrested and imprisoned. International pressure had led to her release after three days of detention. On 20 April, her husband was been imprisoned again because he refused to participate in the investigation of his case as the enterprise had not provided evidence to support the serious charges brought against him. He was released two-and-a-half weeks later. She indicated that her organization had been summoned to Yaoundé because it supported CGT-liberté. These facts illustrated the gravity of the situation that existed in Cameroon and indicated the need for the conclusions on this case to be placed in a special paragraph of the Committee's report.

**The Worker member of Côte d'Ivoire,** referring to the application of Convention No. 87 in developing countries, denounced certain practices which were harmful to workers and their organizations. As indicated in the report of the Committee of Experts, the amendment of certain laws had unfortunately remained frozen for a long time in the offices of the ministries. During that time, the workers had been suffering and the Committee had been waiting. Governments had found a way of wasting time, namely the need for an authorization issued by the State for the operation of a trade union. During the period prior to the granting of such an authorization, the founders of trade unions were dismissed on the pretext of imaginary offences.

The Committee on Freedom of Association had received many complaints concerning freedom of association in Cameroon over recent years. He therefore called for the appropriate legislation to be adopted. The application of a Convention depended essentially on the existence of a legal framework which respected its provisions. He also emphasized that workers in the public service, in the same way as in the private sector, had the right to establish organizations of their own choosing and to affiliate to the international organizations that they wished without prior authorization from the State or the employer.

He said that Convention No. 87 was the key to real freedom in Africa, true mutual respect between Africans and the development of workers. While the ratification of the Convention was to be warmly welcomed, it also had to be applied throughout the continent. If this was achieved, it would be a very favourable development for all Africans and would consolidate a continent under the rule of law, justice and freedom of association.

**Another Worker member of Cameroon** indicated that the debate on freedom of association in Cameroon was of interest to millions of workers. In order to ensure that its work was more effective, the Conference Committee should take due account of the activities undertaken in the country. He gave the example of his recent participation in a strike in his country, although the Committee of Experts had not mentioned by name the main trade union organization involved. With respect to the detentions mentioned by the Worker member of France, he declared that they were the result of an internal conflict between trade unions and that this conflict did not prejudice the principle of freedom of association in the country.

**Another Worker member of Cameroon**, referring to the intervention made by the Worker member of France**,** indicated that he would have liked to be informed earlier of the accusations raised in order to prepare a reply and provide further information. He indicated that he agreed with the intervention made by the Worker member of Cameroon who preceded him as it related to the need for the Conference Committee to confine itself to the general examination of cases. However, he voiced his concern over the examination of the problem of an individual, particularly when that person was a colleague who was close to a Worker member of the Committee. He also warned of the dangers of outsiders imposing their perception on events which had occurred far from them.

**The Government representative** warned the members of the Committee against the dangers of making false accusations. For example, the speaker who had falsely indicated that a trade unionist had been imprisoned had, the previous year, made allegations concerning a shooting incident which had since been proven to be fabricated. Finally, he said that he had noted the positive statements made during the discussion and that his Government was fully prepared to provide the information requested.

**The Worker members** noted that, even after receiving high-quality technical assistance from the ILO, the Government had not demonstrated respect for the ILO or this Committee. They therefore called for this case of continued failure to comply to be placed in a special paragraph of the report of the Committee.

**The Employer members** reiterated that the discussion of the situation in Cameroon had been going on for years in the Conference Committee. Yet the statement by the Government representative provided no precise information on what measures would be taken and exactly when. Despite all the previous efforts made by the Conference Committee, no substantive progress had been achieved. In view of the continued failure to comply with the Convention, they believed that it would be totally justified to place the Committee's conclusions in a special paragraph of its report.

**The Committee noted the statement by the Government representative and the discussion that followed. The Committee emphasized with concern that for many years serious divergences had been noted between national law and practice and the Convention. These grave problems of application related in particular to the requirement of prior authorization to establish a trade union, the right of organization of public servants and the limitations placed upon affiliation to an international organization by organizations of workers in the public service.**

**The Committee recalled that this case had been discussed on many occasions and regretted to note that no progress had been achieved in practice in the application of the Convention despite the technical assistance provided in 2001. The Committee emphasized that full respect for civil liberties was essential for the application of the Convention and that the Government had to refrain from any interference in the internal affairs of trade unions. It urged the Government to amend its legislation on an urgent basis in order to ensure that workers in both the private and the public sectors could establish and freely administer their organizations without the intervention of the public authorities. The Committee also urged the Government to provide a detailed report on all the matters raised by the Committee of Experts and expressed the firm hope that the Government's next report to the Committee of Experts would reflect concrete and positive progress. The Committee decided that its conclusions would be included in a special paragraph of its report.**

***Colombia*** (ratification: 1976). **A Government representative** said that this was the first meeting of the Committee that he had attended and he hoped to establish a sincere and direct communication making it possible to identify problems so that they could be resolved. With reference to Convention No. 87, he noted that of the 141 States which had ratified the Convention, the cases of 97 had been covered by the reports of the Committee of Experts. In the case of Colombia, the Committee of Experts had been making comments since the beginning of the 1990s. Some 20 discrepancies had been identified between the Convention and the national legislation. Subsequently, following the adoption of Act No. 50, the number of discrepancies had fallen to 13, as recognized by the Committee of Experts in 1994. With the technical assistance of the ILO and the direct contacts mission in 2000, Act No. 584 of the same year had been approved, resulting once again in recognition of the progress made by the Committee of Experts. There currently remained only three aspects to resolve. Nevertheless, he added that the case of Colombia had been on the ILO's agenda for many years in view of the violence perpetrated against the trade union movement. He expressed the intention of demonstrating the positive results of government action. While during the first five months of 2002 there had been 86 murders of trade unionists, over the same period this year the figure had fallen to 14, which amounted to a reduction of 84 per cent. He expressed the Government's conviction of the need to combat violence constantly, irrespective of its origins. For this purpose, the Democratic Security Programme was being carried out in parallel with the protection programme of the Ministry of the Interior and Justice, both intended for the protection of persons at risk. The Democratic Security Programme was currently endowed with more resources, which had made it possible to adopt 1,357 security measures. This, combined with sincere and direct cooperation with the trade unions, had contributed to the achievement of the above results. However, he recalled that violence in Colombia affected priests and bishops, mayors and governors, ministers and former ministers, boys and girls, entrepreneurs and workers, whether or not they were unionized. He expressed his commitment to fight for a solution to this complex and difficult problem. He also wished to refer to the means of resolving the problem. For this purpose, the Members of the ILO had proposed two alternatives: on the one hand, the Special Technical Cooperation Programme, and on the other, the appointment of a Commission of Inquiry. With regard to the Special Technical Cooperation Programme, he emphasized that it needed to be supported, strengthened and improved. In his view, this should be considered the real solution and he believed that supporting and financing the programme would contribute to resolving the problems in his country. He emphasized the need to change the approach and analysis of the problems through real and effective collaboration.

With regard to the Commission of Inquiry, he said that, in his view, if such a Commission had been sent to Colombia some years ago, the number of trade unionists who had died would not have changed. A Commission of Inquiry was not a real solution to the problem. Indeed, he believed that it complicated analysis and diverted attention from the real problem, thereby putting off and delaying its resolution. He emphasized that for five years this subject had been discussed regularly every four months, thereby preventing workers, employers and the Government from putting forward alternative solutions. He believed that much progress would have been made if action had been taken rather than words. Moreover, discussing poverty in Geneva was very different from experiencing it and suffering it in his country. There were grounds for wondering whether some people did not prefer to keep discussing the "Colombian problem" rather than committing themselves to resolving it. It was necessary to reflect upon the real contribution of the discussion to benefiting workers and employers. In any case, the prime responsibility for seeking a solution lay with Colombians.

He called upon the trade union leaders in his country to change their attitudes, although he recognized that this required courage and political sacrifices, and that it involved thinking of the country and of those who had died in the hope of preventing future deaths by working together. He reiterated his conviction that the real solution for Colombia lay in cooperation programmes rather than a Commission of Inquiry or a Fact-Finding and Conciliation Commission. He hoped that words, analyses and recommendations would be transformed into effective action and assistance for his country. Colombia more than ever needed strong and democratic trade unions which ceased to be sectarian and sought to become participatory. He called upon NGOs, governments and multilateral organizations to provide all the necessary support to trade unions so that workers, employers and governments understood that change was necessary in the new globalized world. Finally, he expressed concern at the processing of information by the Office.

**The Worker members** stressed that Colombia was once again on the list of cases to be examined before this Conference because of the situation regarding freedom of association and the protection of union rights in the country. They recalled that the Committee of Experts once again pointed out profound discrepancies between Convention No. 87 and national legislation. Federations and confederations still did not have the right to strike. Striking continued to be prohibited in non-essential services in the strict sense of the term. The Labour Minister continued to assume the right to impose the use of arbitration whenever he judged that a conflict had lasted too long.

On a more practical level, the Worker members recalled that they had been continuously denouncing the numerous infringements of freedom of association: the reduction in the number of trade unions, the prevailing violence in particular against unionists, the various obstacles to the legitimate exercise of the right to strike and the complicity of public authorities and paramilitary organizations against strikers, the total impunity regarding the perpetrators of assassinations, and, finally, the lack of implementation of the recommendations made by the Committee on Freedom of Association.

The Worker members noted the various initiatives announced by the Government concerning institutions, but considered that the Minister of Labour was the main authority of a country responsible for enforcing respect for the principles of Convention No. 87. The combining, however, of the Ministry of Labour with the Ministry of Health in Colombia did not appear to be conducive to this goal. The Worker members believed that the persistence of a climate of violence, and especially of the total impunity for the crimes perpetrated against unionists, reflected the crude and cruel reality of Colombia, but also the true position of the Government in matters of protection of union rights. In a situation in which these rights were so flagrantly trampled, the Worker members expressed their wish that the conclusions of this case be included in a special paragraph of the report. They also recommended that the Governing Body appoint a Commission of Inquiry, which was the only body which could, in the view of the Worker members, help change the situation and achieve harmony between labour legislation and the Convention, as well as promote a genuine respect for the principles of freedom of association in practice.

**The Employer members**, recalling that the case of Colombia had been on the agenda of the Conference Committee for some time, noted that the observation of the Committee of Experts contained two main elements: comments on legal provisions and on the violence prevailing in the country. With regard to the legal provisions, the Employer members noted that the number of provisions mentioned by the Committee of Experts had diminished considerably over the years. For well-known reasons, they did not support the views of the Committee of Experts on the remaining three provisions on the right to strike, which, in their view, was not contained in Convention No. 87. They believed that most of the countries called before the Committee concerning this Convention had much more serious problems with regard to their labour laws. The reason why Colombia had been invited for a discussion in the Conference Committee was rather related to the second part of the Committee of Experts' observation dealing with the problem of continuing and widespread violence which was at the core of the current situation.

The phenomenon of violence and counter-violence was going far beyond the issue of freedom of association and labour legislation. Stressing that kidnappings, death threats and murder were most serious criminal offences destabilizing society, the Employer members expressed their deep regret for every single victim. However, the current situation was not due to the existence of some legal provisions. The situation was far more complex; cause and effect should not be confused.

In 2002, the Committee received a credible commitment to combat violence from the then Minister of Labour of Colombia, himself a trade unionist, and the statement made by the Government representative this year was credible as well. The reported decrease in the number of murders was noted, but every remaining victim was to be regretted. It was hoped that the measures taken to improve the security situation would soon show results. The ILO Special Technical Cooperation Programme for Colombia should be continued and intensified. It was important that the Conference Committee would bear in mind the political environment in the country and that it should strengthen the position of the Government that undertook to combat violence. Anything else would play into the hands of the perpetrators of violent acts. The Government should be urged to reinforce its efforts, particularly with regard to impunity.

**A Worker member of Colombia** stated that he had listened carefully and with great respect to the information provided by the Government. His intention was not to weaken the Government but to find solutions. Referring to the concerns of the Committee of Experts reflected in its observation, the speaker recalled that the Ministry of Labour had disappeared in Colombia as a result of restructuring: the combining of the Ministry of Labour with that of Health had had a negative impact on health, labour and social security policies. Structural adjustment policies led to the disappearance of trade unions.

The speaker explained that the Government negotiated with the financial sector, which had led to privatization of key sectors of the economy, including the oil industry and telecommunications. The poorest sectors suffered from the impact of labour, pension and tax reforms. Dismissals and unemployment were on the rise – in such circumstances the Minister should not authorize the dismissal of workers.

The speaker also expressed his concern about the statements of the President of the Republic on 4 June 2003, which suggested that the relevant provisions of international Conventions could be used in order to denounce them. The Colombian employers should adopt a new type of labour culture, one which respects union activities. In conclusion, the speaker suggested that the Government should consider the appointment of a commission of inquiry as a positive step given that it might contribute to solving the problems at hand.

**Another Worker member of Colombia** stated that violations against the fundamental human rights of workers persisted, and threats, forced displacements and the intimidation of union leaders continued. Such violations interfered with the full exercise of freedom of association. The speaker pointed out that the reduction in the number of assassinations of unionists did not imply that there had been progress. He denounced the murder of 121 unionists as of June 2002 and the situation of generalized impunity, which implicated the Government. The speaker also referred to the statements of the President of Colombia on 4 June 2003 on the possible denouncing of international treaties and Conventions and emphasized that no country had the right to ignore the fundamental rights of workers and much less justify itself in doing so by means of an alleged popular mandate. In conclusion, he demanded greater political will on behalf of the Government to halt the anti-union climate and clear commitments by the Government to refrain from abrogating the fundamental rights of workers. He requested the appointment of a Commission of Inquiry and the inclusion of a special paragraph on Colombia in the Committee's report.

**Another Worker member of Colombia** agreed with the previous speakers, which showed there was a common sentiment among the Colombian trade union movement. The speaker recommended that the Conference Committee took the following steps: (1) urge the Government to immediately enforce the international Conventions it had ratified, according to the recommendations of the Committee of Experts, and in particular Conventions Nos. 87, 98, 151 and 154; (2) require the Government to revoke the power to declare strikes illegal from the executive power, and vest this power in the judiciary; (3) request the Government to refrain from adopting or amending legislation, including reforms to the Constitution, which are contrary to its international obligations, in both labour rights and human rights; (4) request the Government to comply with the recommendations of the supervisory bodies of the ILO and, in particular, with paragraph 506 of the report of the Committee on Freedom of Association, which had been delivered to the Governing Body in March 2003; (5) exhort the Government to strengthen its programme for protection of trade unionists by implementing the recommendations of the above report; and, finally, (6) require the Government to empower the Inter-Institutional Committee for the Promotion and Protection of the Human Rights of Workers by providing them with the resources necessary for them to implement the plan which had already been approved for 2003.

The speaker emphasized the need to follow up the complaint against the Government of Colombia and to appoint a Commission of Inquiry, the ideal mechanism available to the international community to contribute to solving the serious problems raised in the complaint. It requested that this issue be taken up at the next sitting of the Governing Body. It endorsed the request for the Committee to dedicate a special paragraph to the non-compliance of Convention No. 87.

Finally, the speaker explained that, on 4 June 2003, at a hearing in the Constitutional Court of Colombia, called to define the constitutionality of a law which would call for a referendum on constitutional reform, the President of the Republic stated that Conventions were not eternal and that, in the event that the population approved, by referendum, legislation contrary to the ILO Conventions, then he would take this as an indication that the people were mandating him to denounce the Convention. This, according to the speaker, meant that the incompatibility between national law and the fundamental right to collective bargaining could possibly lead to the denunciation of an international Convention and challenged the Government's claim that it respected the fundamental principles and rights enshrined in ILO Conventions.

**The Worker member of Norway**, **speaking on behalf of the Worker members of the Nordic countries**, stressed that Colombia was still the most dangerous country in the world for workers who wished to organize. Over 90 per cent of the unionists killed each year had been killed in Colombia, with 184 alone in 2002. During the first half of 2003 the Government, police and the military had been responsible for an increasing number of human rights violations against labour activists, including violence against women unionists which had increased by 50 per cent. In the last months the paramilitary had been targeting families of unionists, and Carlos Castaño, the leader of a paramilitary organization, had publicly announced that the children of the leaders of the oil workers' union USO would be killed. As evidence of this the speaker cited two kidnapping attempts of the daughter of the head of the human rights office of the national organization CUT.

The speaker stated that the Government's protection programme for unionists was not functional, due to lack of funds, excessive time spent on processing requests for protection and a paucity of labour inspectors – only 271 to cover more than 300,000 companies in 1,097 municipalities. The dismissal and blacklisting of union leaders was commonplace. Furthermore, Colombian law was in violation of Convention No. 87 and favoured non-union workers over unionized workers by allowing non-union workers and employers to sign "collective agreements". Workers' rights were further threatened by the proposed referendum concerning labour law, which would eliminate Sunday and holiday benefits, cut severance pay, freeze wages in the public sector and make the labour force more flexible. The speaker urged the Committee to demand that Colombia be included in a special paragraph and that the Governing Body appoint a Commission of Inquiry to be sent to the country.

**The Worker member of the United States** stated that this was the case which was the greatest challenge to the Committee, as the violations of the Convention by Colombia challenged the authority of the ILO. If the Committee and the Governing Body would not act effectively and resolutely, the institutional integrity of the ILO would be compromised. More trade unionists were killed in Colombia than in all other countries combined (184 during 2002 and over 1,900 since 1991). He deplored the argument made by the Government representative that the situation was getting better as there was a relative decrease of homicides in the first quarter of 2003. The relative increase in assaults, death threats, kidnappings and unjustified detentions and the 32 assassinations this year were no accomplishment. The speaker also rejected the argument that the Government could escape its responsibility under the Convention since the human rights violations suffered by trade unionists were the consequence of a general climate of violence that affected all segments of society. This argument fell apart for several reasons. Firstly, there were a high number of offences committed against unionists and there were sectoral concentrations of offences, as well as direct linkages to collective bargaining. Secondly, the Government was responsible for the assassinations because paramilitary groups operated with the open support and tolerance of the armed forces.

Thirdly, the Government was directly responsible because of acts of omission and commission related to the protection of trade unionists and the entire issue of impunity. The United Nations High Commissioner for Human Rights had publicly expressed concerns over the delays in the funding of the Government's Programme for the Protection of Human Rights Defenders and Trade Unionists, which had a direct impact on effective implementation of security measures. The speaker also recalled that according to the Committee of Experts there were still no convictions of those responsible for assassinations. The Attorney-General of Colombia was known to have derailed key human rights prosecutions.

The conclusions adopted by the Conference Committee in 2002 provided that in the event that the Government did not fully avail itself of technical cooperation programmes, the Committee would be obliged to consider stronger possibilities. According to the three Colombian union centrals, the ILO Special Technical Cooperation Programme had never been fully implemented and neither the Government nor the Colombian entrepreneurs had shown a real engagement with the programme. Accordingly, the speaker joined with the Worker members in calling for a special paragraph in this case.

**The Worker member of Indonesia** expressed serious concern at the extreme violence against trade unionists in Colombia, as well as the interference by the Government in trade union affairs. He supported the proposals made by other Worker members in order to promote peace, social justice and respect for Convention No. 87 in Colombia.

**The Worker member of Mexico** recalled that the Worker members attending the 86th Session of the Conference held in June 1998 had submitted a request, by virtue of article 26 of the ILO Constitution, invoking the violation by Colombia of Conventions Nos. 87 and 98. He pointed out that the violation of the above Conventions was due to the responsibility of the State for the actions of government agencies and for having failed to safeguard and protect fundamental rights. The Government continued to publicly assault freedom of association of the trade union movement, through its mass media, and claimed that the trade union movement was responsible for the economic crises undergone by the private and public sectors. Furthermore, the Government had set up mandatory arbitration tribunals to resolve collective conflicts with employers in charge of non-essential services. He added that the administrative authority had the power to qualify the legality of the strikes – recently, it had declared illegal a strike that took place in the banana sector.

The speaker highlighted the violations relating to the Trade Union of the Telephone Company of Bogotá, in an attempt against privatization, when massive dismissals occurred, and trade union leaders were threatened in addition to the violation of Conventions Nos. 87, 98, 135 and 154. He further indicated that the Government had convened a mandatory arbitration tribunal, violating thereby the collective agreement and Convention No. 154. He added that the Government intended to restructure a company of the petroleum sector to eradicate the right to freedom of association, contrary to Conventions Nos. 87 and 98. Furthermore, the trade union leaders of oil refineries were prohibited from access on account of their militant attitude in industrial plants, which led to a lockout. The Trade Union of Bavaria (SINALTRABVARIA) indicated the annulment of contracts of more than 40 trade union leaders, resulting in unilateral dismissals without a just cause. The collective agreement which was imposed through this intimidation attacked the trade union organization. Thus, in the span of three years, trade union membership decreased from 3,500 members to 300. The speaker joined other speakers in requesting a special paragraph on this case, and exhorted the Government to prevent the attacks on the lives and integrity of trade union leaders and workers.

**The Worker member of Côte d'Ivoire** expressed his profound concern at the delay in approving the setting up of a Fact-Finding and Conciliation Commission. He indicated that labour legislation continued to violate many provisions of Convention No. 87: the number of trade unions continued to decrease; trade union leaders were subjected to programmed dismissals; and militants received death threats. The ILO could act. It could encourage the creation of decent jobs and help save human lives in Colombia. In view of the violence, the liberalization of social legislation and the assaults made on trade union freedoms, the least one could do was to endorse the proposal of a Commission of Inquiry in Colombia.

**The Worker member of the United Kingdom** stated that the TUC paid close attention to the grave situation in Colombia and had developed close relations with the national confederations. It would soon launch a scheme to provide temporary respite to Colombian trade unionists in danger of assassination. Colombian working people had a desire for a social, democratic and peaceful Colombia, but everyone who spoke out for that alternative was in danger. It was true that unionists were not the only victims, but just as journalists were murdered for writing the truth or prosecutors when they investigated political assassinations, trade union leaders and members were murdered precisely because they worked to represent the interests of Colombian working people. All victims had in common that they represented an alternative peaceful and social model for the country, a society based on dialogue and progress through democratic participation.

The speaker deplored that the ILO had been prevented from taking the necessary measures to support Colombia in dealing with the impunity. It was of little comfort for the families of the 32 colleagues murdered this year that the number of murders of trade unionists was falling. Primarily because the Colombian employers had blocked consensus in the Employers' group, the Governing Body had failed to agree on a Commission of Inquiry to do the job the Colombian State had failed to do. Not even agreement on a special paragraph last year or on a Fact-Finding and Conciliation Commission could be found, while 184 trade unionists had been murdered. According to the speaker, this was because there were too many companies implicated in the violence and repression and because governments also guilty of serious violations of fundamental ILO Conventions feared to be next. In addition, some governments believed the claims that Colombia remained a fully functioning democracy, a view not shared by the speaker. If Colombia was to be a functioning democracy it needed peace, and to achieve peace it must break the cycle of impunity. As the State had proven itself incapable of doing so unaided, that task still needed the support of a Commission of Inquiry. Stating that those who preferred repression and violence to dialogue and compromise benefited from the ILO's inaction, the speaker noted that 15 families controlled Colombia's capital. However, the ILO should put the interests of the working people, free thinking people, democratic and peace loving people, the poor and the unemployed, the socially excluded and the displaced before the interests of the elites who had been responsible for the disaster for decades.

**The Government member of the United States** stated that her Government was deeply concerned about the violence against trade unionists in Colombia and that it supported efforts to find solutions, including the ILO's Special Technical Cooperation Programme for Colombia. It was urgently important to protect the lives of trade unionists, to promote social dialogue, to combat impunity, and to bring Colombia's labour legislation and its implementation fully into conformity with the Convention. Her Government believed that the Government of Colombia was committed to restoring the rule of law and to ensuring that all members of society could exercise their rights under conditions in which personal safety was guaranteed. There were indications that efforts to implement that commitment were beginning to meet with some successes, but much more needed to be done. The Government of Colombia was urged to continue to cooperate with the ILO and to implement without delay the recommendations of the Committee of Experts.

**The Government member of Mexico** stated that the information supplied by the Minister of Labour had not only provided a detailed reply to the comments of the Committee of Experts but had also revealed the constructive attitude of the Government which every four months and every year reported on the measures adopted and the efforts made in order to guarantee the exercise of trade union rights in conformity with Convention No. 87. Although the results might have not fully met the Committee's wishes, the speaker acknowledged the positive trends presented by the Government representative. The speaker also noted that the domestic situation in Colombia was well known, which was an obstacle to the implementation of measures for the full enjoyment of trade union rights. While she shared the concerns of the Worker members on the victims of violence, she associated herself with the point of view of the Government representative that violence did not concern exclusively trade unionists but affected all sectors of Colombian society. The speaker considered that the Special Technical Cooperation Programme for Colombia represented an ideal instrument for the ILO to reach a solution to the problems affecting workers in Colombia in the framework of its competence and in close collaboration with the Government and workers' and employers' organizations. The speaker concluded by affirming that her delegation considered that a Commission of Inquiry would not be appropriate at this moment since the Special Technical Cooperation Programme was in the process of being implemented and had begun to produce results, thanks to the financial resources provided by the ILO and other donors as well as the obvious willingness of the Government to implement this project.

**The Government member of Denmark, also speaking on behalf of the Government members of Finland, Iceland, Norway and Sweden**, regretted that the Government had failed to adopt the draft legislation prepared by the direct contacts mission in February 2000. This called into question the will and ability of the Colombian

authorities to make significant progress to safeguard trade union leaders' rights to life, physical safety and freedom of association. The Nordic countries continued to monitor closely the implementation of the ILO's special cooperation programme for Colombia and recognized the important role the ILO could play. She regretted that the Governing Body had to deal with new and serious allegations of violence, as reported in Case No. 1787 of the Committee on Freedom of Association, while, at the same time, acknowledging a certain progress in the last year. But still, 14 trade unionists killed were 14 too many. She firmly condemned the continuous murders and kidnappings of officials and members of trade unions and urged the Government to take every possible measure to change the situation of impunity that the perpetrators of these violations enjoyed, in line with the recommendations of the June 2002 report of the Committee on Freedom of Association. She endorsed the suggestion, to have the case mentioned in a special paragraph.

**The Government member of the Dominican Republic** expressed great distress at the assassinations of trade unionists and other Colombian citizens. He recalled that the case had been discussed by the Conference Committee on several occasions and that the Government continued to indicate its interest in putting an end to the violation of Convention No. 87 by informing the Committee of the efforts deployed to resolve the situation. He stressed the importance that the ILO continue to strengthen the Special Technical Cooperation Programme for Colombia as he considered it as a vital measure which would resolve the problem prevailing in Colombia.

**The Government member of Germany** took note of the statement made by the Government representative and stated that the situation with regard to violence committed against trade union leaders and members was still very serious. He understood why the Worker members perceived the information on the decrease of assassinations as cynical. However, he also noted that the Government representative had expressed his sincere regrets for every victim. With regard to the problem of impunity, he pointed out that there was no law providing that perpetrators of crimes against trade unionists should not be punished. Impunity was rather a problem in practice that had several causes, such as the intimidation of judges. Noting that several speakers had requested the establishment of a Commission of Inquiry, he stated that this question was not within the Conference Committee's competence. To conclude, he expressed his view that the Committee should take into account the clearly different attitude of the Government representative in comparison to that of the Government representative of Belarus discussed earlier, and as a result, the Committee should not reach the same conclusions.

**The Government member of Chile** welcomed the information presented by the Government member of Colombia. He shared the concern and preoccupation with regard to the situation in Colombia, as had been expressed by the group of Latin American and Caribbean countries (GRULAC). The speaker indicted that the Special Technical Cooperation Programme for Colombia was the best contribution that could be made to ensure the application of Convention No. 87 in the country.

**The Government member of Uruguay** highlighted the importance of the information supplied to the Conference Committee by the Minister. The speaker was of the view that it was equally important to take note of the progress made, whilst bearing in mind the complexity of the situation. Cooperation with the ILO played a fundamental role in reaching real solutions to the difficult situation in Colombia.

**The Government member of Peru** (Vice-Minister of Employment Promotion), expressed his support for the society and the Government of Colombia with regard to the general violence, and the loss of Colombian lives from all social classes. The speaker outlined the priority attached by the Government to the protection of trade union leaders to whom large resources were allocated for their protection. It was necessary to strengthen the Special Technical Cooperation Programme for Colombia undertaken by the ILO to give an impetus to the mobilization of the entire society in support of peace.

**The Government member of Italy** stated that the situation in Colombia was particularly preoccupying. He was of the view that it was not appropriate to appoint a Commission of Inquiry. He indicated that strengthening the technical cooperation programme with the ILO would be preferable. He equally recommended that clarifications be made with respect to the provisions of the legislation of Colombia on the right to strike in the public sector.

**The Government member of Canada** deplored the continuing serious situation in Colombia, while recognizing that the Government had achieved some progress in reducing violence against trade unionists over the past year. The Government was urged not to use emergency measures as an instrument to threaten and harass trade unionists, and to avoid accusations of subversive activity that de-legitimize trade union activity and expose trade unionists to attack. The Government should establish and strengthen the relevant institutions to end impunity. Failing to ensure full and impartial investigations perpetuated the violence. Further, the speaker urged the Government to bring the legislation into line with international labour standards and ensure its full implementation. She supported the ILO Special Technical Cooperation Programme, as social dialogue and appropriate legislative measures would promote social peace and she urged the Government of Colombia to cooperate fully with the ILO.

**The Government representative** stated that he had listened carefully to all the interesting and enriching interventions made during the discussion. Many of the interventions had to be interpreted in light of the information each one of the speakers was in a position to obtain and evaluate. In this respect, the speaker pointed out that a number of the interventions had referred to the convening of mandatory arbitration proceedings. The speaker indicated that the number of conflicts submitted to mandatory arbitration had indeed increased, but that their purpose was precisely to reduce the direct interference of the administration in the solution of conflicts. Those who had been most interested in these types of mandatory arbitration were the workers: of 50 compulsory arbitration proceedings, 47 had been at the request of the workers, and the Ministry had simply approved their request. The speaker suggested that the information, which the social partners wished to submit to the ILO, be organized in a way as to find constructive solutions to the problems.

The Government representative shared the deep concern about the violence in Colombia. His Government was making serious efforts to curtail the acts of violence against unionists. He pointed out that the budget allocated to the protection of unionists was 15 times higher than that allocated to the protection of judges. Taking into account the efforts made regarding security issues, he was confident that the progress observed in the last year would continue.

The speaker also reminded the Committee of the assassinations of and violence against politicians that had occurred in Colombia: the father of the President of the Republic had been assassinated, the Vice-President had been kidnapped, as well as relatives of the Minister of Education and the Minister of Culture. The list of civil servants, including judges, who had been targets of violence was considerable.

Regarding the observations of the Committee of Experts concerning pending legislative amendments, the Government representative pointed out that the number of discrepancies had been gradually reduced from 20 to 13 and that three legal issues were pending.

The Government representative emphasized that his Government was fully committed to the ILO and had great expectations for the strengthening of technical cooperation programmes. The Government was grateful to the Employer and Worker sectors, in spite of their differences, for the confidence they shared in the potential of Colombia, and entreated all to join forces so that future generations would inherit a better country.

**The Worker members** were of the view that their analysis had been quite clear and that their legal reasoning was sufficiently developed for their voices to be heard. They underlined that spokespersons of quality were needed for the establishment of continued social dialogue, but they stressed that it was of utmost importance to keep those spokespersons alive. The Worker members recalled that they had repeatedly denounced the fact that labour legislation was not in conformity with Convention No. 87, which was further aggravated by the adoption of new legislation, which was particularly retrogressive. In practice, a retreat in trade unionism was noted in Colombia: persistent attacks on trade union freedoms; obstacles to collective bargaining; continued violence affecting the trade union movement in particular, and a gross impunity of crimes committed against workers. Whilst fully aware that the decision with regard to a Commission of Inquiry was not up to the Conference Committee, the Worker members requested the immediate discussion by the Governing Body of the proposal to appoint a Commission of Inquiry for Colombia and stressed the importance of ensuring that all efforts be made aimed at reaching the acceptance of this proposal. They expressed the view that a Commission of Inquiry rather than technical cooperation was the only measure that would lead to an improvement of the situation. Finally, they requested that the conclusions reached on the case be inscribed in a special paragraph of the Committee's report.

**The Employer members** stated that improvements in several areas were necessary in the present case, mainly with regard to the prevailing violence, which was at the core of the problem. In particular, the issue of impunity needed to be addressed, a problem of practice and not of law which had many causes. The Employer members supported neither the proposal to include a special para-

graph in the report of the Conference Committee nor the establishment of a Commission of Inquiry by the Governing Body in order not to weaken the position of the Government in solving the problem of violence.

**The Committee noted the information provided by the Government representative and the discussion which followed. The Committee noted that the comments made by the Committee stressed the very large number of assassinations of and acts of violence against unionists and the absence of prosecution of their perpetrators on the one hand, and specific legal infringements to the right of workers organizations to freely exercise their activities, on the other. The Committee noted that the Committee on Freedom of Association had examined the complaints concerning assassinations and acts of violence against unionists. The Committee noted with deep concern the dramatic situation of violence.**

**The Committee firmly condemned once again the assassination and abduction of unionists and the abduction of workers and employers, and recalled that workers' and employers' organizations could only exercise their activities freely and effectively in a climate devoid of violence. In this respect, the Committee requests the Government once again to reinforce the necessary institutions in order to put an end to the situation of impunity, which is a serious obstacle to the free exercise of the freedom of association guaranteed by the Convention.**

**The Committee urged the Government to immediately take the necessary measures to put an end to this situation of insecurity so that workers' and employers' organizations could fully exercise the rights they are entitled to under the Convention, by restoring respect for fundamental human rights, in particular the right to life and security.**

**Noting the complaint filed in June 1998 under article 26 of the ILO Constitution, which referred in particular to the climate of violence against unionists, the Committee expressed the hope that the Governing Body would take the appropriate measures – as to the nature of which various opinions were expressed – in order to contribute to restoring a climate of non-violence which is a prerequisite for the full exercise of freedom of association.**

**The Committee addressed an urgent call to the Government to immediately take the measures necessary to guarantee the full implementation of the Convention in both law and practice. The Committee requested the Government to provide a detailed report, including an exhaustive reply to the comments made by trade unions, so that the Committee of Experts could once again examine the situation at its next meeting, and expressed the hope that it would be able to observe tangible progress in the very near future.**

**The Worker members** wished to stress two points. First, they did not consider it appropriate to mention in the conclusions that various views had been expressed with respect to the measures to be proposed to the Governing Body and they considered that the Commission of Inquiry remained the only measure to put an end to the climate of violence in the country. Furthermore, the reticence of the Employer members to firmly condemn the situation, which had damaging effects for trade unions as for employers, seemed to be incomprehensible, mostly in view of the gravity of this case in comparison with other cases, where the use of a special paragraph had been made. They expressed in the most unequivocal terms that the ILO could not have double standards.

**The Employer members** again emphasized that they did not support the proposals of a special paragraph, nor the establishment of a Commission of Inquiry by the Governing Body, because they believed that technical cooperation was the better instrument to attain the objectives. They reiterated that their position could not have come as a surprise, as the Employer members had already expressed this view the year before. The situation could not simply be improved by changing laws, but was much broader and the ILO's Special Technical Cooperation Programme should be supported.

Following the adoption of the conclusions on the application of Convention No. 87 in Colombia, **the Worker members** wished to make a statement and asked that this be transmitted to the Director-General and included in the report as an explanation of their support, in a spirit of cooperation proper to this tripartite body, of the conclusions on the case discussed.

The Worker members remained convinced that it would have been appropriate, despite the statements made by the Government representative, if the Governing Body could have asked the Office to establish a Commission of Inquiry in Colombia. This was not meant as an act of hostility towards the Government but as a reflection of a profound concern about the impunity, the violence and the assassinations that militants and trade union leaders were victims of. It was deplorable that the politicization of this case had led to the acceptance of the fact that the continuous loss of lives of people, including those of trade unionists, had become an ordinary point on the agenda of this Committee every year. It should be clear that it would never become an ordinary agenda item on this Committee for the Worker members.

The Worker members deeply regretted that the adopted conclusions were not taken up in a special paragraph. With such conclusions, it seemed that double standards were being used, undermining the moral authority of this Committee and the supervisory system. The fact that this was actually a barely hidden objective for some only aggravated the incapacity of this Committee to judge in this case. The continuous failure to implement the Convention was the absence of the adoption of adequate measures to guarantee respect for elementary freedoms, such as the right to life, which were sine qua non for freedom of association. This was a case of continuous failure that had cost the lives of hundreds of people per year and affected thousands of others in their professional lives.

The Worker members welcomed the commitment of all those trade unionists but also the employers concerned about the production of goods and services respectful of social rights, civil servants and politicians, who continued to fight against the violence and the impunity, and in favour of freedom of association, collective bargaining and the right to strike. A special paragraph would have been, rightly so, an encouragement and an act of solidarity with those who were fighting on a daily basis in their own area for another kind of world. This other kind of world remained possible but, without doubt, it should have been stated more loudly.

**The Employer members** noted the views of the Worker members. They said that they stood by their earlier statement and considered that some concrete proposals made during the discussions of the day before were not useful in helping the Government of Colombia in its efforts to improve the situation. They were convinced that the steps the Employers had proposed were more appropriate in the situation.

***Cuba*** (ratification: 1952). **A Government representative** referred to the observation by the Committee of Experts which considered that the explicit reference in the legislation to the Confederation of Cuban Workers constituted a restriction of freedom of association. She indicated that the rights of assembly, demonstration and association enjoyed by workers, as well as the recognition of the independence of trade union organizations, were set out in the Constitution. The fact that in Cuba there was a single trade union confederation to which the 19 national branch unions were affiliated was not a result of government imposition or legislative enactment, but of the tradition of unity in the workers' movement in Cuba which went back to the end of the nineteenth century and had been strengthened by the workers' struggles and claims for over a century, leading to the establishment of the Confederation of Cuban Workers in 1939 by the will of the workers. The desire for unity in the workers' movement had been reiterated and strengthened in all the congresses held by trade union organizations. The legislation had merely confined itself to recognizing the existing de facto situation.

Legislative Decree No. 67 of 1983 respecting the organization and operation of central state administrative bodies had been repealed in so far as it referred to the Ministry of Labour and Social Security by provision 6 of Legislative Decree No. 147 of 21 April 1994, which had been sent to the Office with the report for that year. What the Committee of Experts described as trade union monopoly was a distortion of the real situation of trade unionism in the country. Although there was a single trade union confederation by the will of the workers, this was not the only body for the participation of the trade union movement in decisions on matters affecting workers. The 19 occupational trade unions constantly participated at the various levels of the structure, from the national level down to the first level, without any interference or prohibition, throughout the process of taking decisions which affected workers, right from the central state administrative bodies to the enterprise level.

Legislative Decree No. 229 of 1 April 2002 had repealed the provisions of Legislative Decree No. 74 of 1983 respecting collective labour agreements and it contained provisions conferring upon enterprise administrations and trade union organizations the right of participation in the determination of fundamental aspects such as employment conditions and other conditions of work through collective labour agreements which were adopted at all workplaces, including mixed enterprises and enterprises with foreign capital, following their discussion and approval by workers' assemblies in which their content and the obligations and duties of the parties were discussed.

Neither the Labour Code nor its supplementing legislation set out requirements or conditions for the establishment of trade unions. These existed and achieved recognition by workers and enterprise management through the activities that they carried out on a daily basis at the workplace. There was no body or department in the state administration which registered or approved the establish-

ment of trade unions. The Labour Code provided that all workers without prior authorization enjoyed the right to organize freely and to establish trade union organizations, which was in conformity with the Convention. The structure, principles, statutes and by-laws governing trade union activities were discussed and approved by the trade unions themselves in the assemblies that they held regularly in accordance with their own interests and without any interference. The workers proposed and elected their respective leaders in assemblies held at the workplace. Trade unionism in Cuba was organized as a reflection of the unity of the workers themselves and was not imposed or modified by the legislation.

The Labour Code was undergoing a process of revision due to the need to adapt it to the changing socio-economic conditions of production and the current situation of the country. The XVIIIth Congress of the Confederation of Cuban Workers had adopted a resolution in which it agreed to hold a discussion in the workplaces of the country through the holding of workers' assemblies to consult on the content and proposed changes to the Labour Code. The Government was respecting the right of the workers to be consulted on the new Labour Code, which would govern their rights and duties, as well as those of enterprises, and would establish the principles on which industrial relations in the country would be based.

The case of the Committee on Freedom of Association to which the Committee of Experts referred had been examined by the Governing Body in March 2003 and the reply had been adequately reflected. The persons referred to in the case were not undertaking trade union activities in any workplace in the country, were not workers as for some years and through their own will they had not been in an employment relationship with any entity in the country, had not been put forward or elected in any workplace, did not lead or represent any group of workers and were not therefore trade unionists.

**The Worker members** recalled that the Cuban trade union movement had a long and rich experience and had played a fundamental role in the emergence of social rights in Cuba. However, for many years the Committee of Experts had consistently denounced the failure to comply with the principles of freedom of association and had emphasized in particular the existence of a trade union monopoly in Cuba. The adoption of legislative Decree No. 67 of 1983 and the Labour Code of 1985 had only made things worse. On several occasions, the Committee on Freedom of Association had also found that the existence of a trade union monopoly in law as well as in fact was contrary to the principles of freedom of association, especially when trade union pluralism was not allowed. A few years ago, the Conference Committee had examined the facts which were being reiterated before it today, that is the refusal to grant recognition and accreditation to an independent trade union, searches carried out in trade unionists' houses, harassment, detention, etc. In fact, since last March three trade union leaders of the Single Council of Cuban Workers (CUTC) had been detained and one of them was in a serious state of health. Trade union training materials, as well as certain assets had been seized. These leaders had been imprisoned because they had expressed their belief that a more just society which respected the rights of workers would allow the establishment of trade unions which could express themselves freely. On this subject, the Committee on Freedom of Association had noted that the CUTC had made an application for accreditation to the Cuban authorities.

The principles guaranteed relating to freedom of association were universal. For many years, both the Committee of Experts and the Committee on Freedom of Association had requested the Government to amend the legislation to bring it into conformity with the spirit of Convention No. 87. If the principles of freedom of association were not protected, it would also be difficult to give effect to the other fundamental rights guaranteed by ILO Conventions. The discussion in the Governing Body last March had reaffirmed that the Government of Cuba did not respect these principles. The Worker members requested the Government to amend its legislation so as to guarantee the existence of trade union pluralism in Cuba. They also called for an end to threats and harassment against Cuban trade union officers, for the respect of the principles of freedom of association, including the recognition of all trade union organizations, and for the immediate release of the detained trade union officials. Recalling that the Committee of Experts had been making comments for many years on the failure of Cuba to apply Convention No. 87, they emphasized that a direct contacts mission should visit Cuba.

**The Employer members** recalled that the Committee had discussed this case on many occasions over the years. They observed that the issue of trade union monopoly had been a common problem in many States when the world had been divided into two blocs. Nevertheless, there were still some pockets of resistance. Trade union monopoly enshrined in law had always been considered as a violation of freedom of association by the ILO supervisory bodies. Reference made to a particular trade union by name prevented the establishment of new trade unions in law and in practice. The statement of the Government representative that the law reflected the will of the workers was an old excuse and did not justify the reference made by the law to a single trade union confederation by name. The Convention required that workers should have the opportunity to establish other organizations if they so wished, so that trade union pluralism would be possible in all cases. Trade union monopoly had existed in Cuba in law and in practice for many decades and Legislative Decree No. 67 of 1983 conferred on the Confederation of Cuban Workers the right to represent the country's workers in Government bodies. This was a clear case of violation of freedom of association and, as the problem had persisted for many years, it would be appropriate to have a direct contacts mission in order to examine ways of resolving the matter.

**The Employer member of Cuba**, referring to his experience in his shipowners' group Antares, indicated that he would describe in all honesty how things worked in his country. His group consisted of six enterprises and five shipping companies, employing 5,900 seafarers and 7,000 workers on shore, all freely affiliated to the Merchant Marine, Ports and Fishing Union. He said that one of the fundamental rights in his country was that employment was guaranteed. In all cases, access to a job was carried out on the basis of the formulation and signature of an employment contract regulated by the Labour Code, and he added that in his group all the workers enjoyed contracts of employment without limit of time in accordance with their skills. In each enterprise, the trade union leaders and the director had signed and approved a collective agreement establishing, in accordance with the characteristics of each establishment, the rights and duties of the employers and the workers. This not only formally complied with national law, but the analysis and discussion of the relevant provisions with the workers meant that they were well informed and discharged their work with greater efficiency so that, in the end, everyone came out a winner.

He had decided to take the floor in view of the allegations made that his country was violating freedom of association. In this respect, he indicated that when a seafarer or his family required assistance, or on the occasion of one of the cyclones which had swept over his country in recent years, the only support was the Merchant Marine, Ports and Fishing Union, which was the only organization to which the workers in his group were affiliated. No other trade union had ever been presented.

He added that many anti-Cuban groups established and financed supposed associations with a view to disseminating false and distorted information on violations of every nature in his country, thereby endeavouring to justify the continuation of the blockade which had lasted for over 40 years. Shipping enterprises had experienced many economic difficulties as a result of the blockade. He hoped that the members of the Committee would come to know the truth.

**The Worker member of Cuba** indicated that the Labour Code in his country referred to the Confederation of Cuban Workers as the only central trade union organization existing when it had been adopted, a situation which remained unchanged. The Confederation had been established in 1939, namely 20 years before the triumph of the Revolution, and was not therefore a creation of Cuban socialism. The Government had proposed to revise the current Labour Code to adapt it to the economic and social changes which had occurred and to the recommendations of the Committee of Experts on various Conventions. He recalled in this respect that it was usual practice for the workers to approve the principal laws and legislation which concerned them. Although the workers had accepted the proposed revision of the Labour Code, it should be recalled that this was a long and complex process. He added that in his country trade unions were in operation in all workplaces and that workers enjoyed the right to establish trade unions without the authorization of the Government or the requirement to register them with any Ministry. Moreover, no organization intervened in their elections or inspected them. The recognition of trade union organizations formed part of the right to be represented through elections held by the workers in first-level assemblies and then by secret ballot. All workers could have their names put forward, but those who had not been put forward or elected could not act as workers' representatives. The persons to whom reference had been made as trade union leaders during the discussion had not been elected by any worker in his country. As a result, they were not imprisoned because they were trade union leaders, but because they had violated laws adopted by the people of Cuba in defence of their sovereignty and self-determination.

**The Government member of Zimbabwe** fully associated himself with the statement made by the Government representative of

Cuba and noted that there was good progress on the issues raised by the Committee of Experts. For instance, Cuba was reviewing its legislation to address the concerns raised with respect to trade union monopoly. With regard to the CUTC, he fully supported the Government's view that this group did not represent any workers in Cuba and its activities concerned non-labour issues. A direct contacts mission would be inappropriate in light of the information provided according to which Cuba was preparing legislation to address any shortcomings.

**The Worker member of Colombia** recalled that freedom of association was intimately linked to full observance of human rights and called upon the Government of Cuba to respect those who had decided to establish new workers' organizations outside the existing confederation. Indeed, a significant number of workers had established their own organization and claimed the right to be recognized, to represent their members and to enjoy within the country a space for political organization without the fear of being labelled counter-revolutionaries. Over and above the support that his organization had always demonstrated for social progress in Cuba, it was absurd to deny the right of a group of workers to democratic organization, and it was even more serious that their leaders had been condemned to prison for 25, 20 and 15 years respectively, as had occurred to Mr. Pedro Pablo Álvarez Ramos, Mr. Oscar Espinosa Chepe and Mr. Carmelo Díaz Fernández, the leaders of the CUTC. He called upon the Government to recognize the CUTC, release the detained trade unionists and other political prisoners and reform its anti-democratic policies which, through acts such as the recent executions, were giving rise to a climate of deep-rooted divergence with those who, like himself, refuted the application of the death penalty under any pretext.

**The Worker member of Uruguay,** referring to the comments of the Committee of Experts concerning the alleged situation of trade union monopoly in Cuba, said that in practice this was the result of a free decision by Cuban workers who considered the Confederation of Cuban Workers as their legitimate representative. He said that in his country, where freedom of association did not exist, it was believed that trade unionists were created from the bottom up, namely starting with the workers. The main challenge faced by new supposed trade union organizations in Cuba was not related to the law, but to achieve support from Cuban workers, which was far from becoming a reality. This issue went beyond the revision of the Labour Code, which was being discussed by the workers. Emphasis should be placed on the broad participation of the workers in the assemblies, an aspect which the world trade union movement should follow: the real participation of the workers in decision-making processes.

**The Worker member of Brazil** said that in her view there was freedom of association in Cuba. Workers in Cuba could choose their trade union organizations, disseminate information, elect their representatives, undertake consultations on economic plans and put forward their claims. Trade union organizations were an effective force with their own political space and economic influence, and enjoyed freedom of expression. The fact that they constituted a single system did not run counter to democracy or freedom of association. In her view, there was no freedom of association if there was no unity among workers. Freedom existed when there were different opinions and the majority view was selected by voting. This happened in all democracies. A multiplicity of representation was equivalent to the non-existence of democracy, which was the same as having no representation. In such cases, workers would be divided in relation to their employers and the Government. The CGT in Brazil defended unity of representation of workers as it considered it to be the best form of democracy.

**The Worker member of France** said that the application of Convention No. 87 in Cuba was an issue that reappeared periodically before the Committee and that, in general, dialogue on this issue fell on deaf ears. The Government had repeated its usual arguments before the Committee, with few variations. The supervision of the application of Convention No. 87 was not only normal, but necessary. The Government nevertheless turned a deaf ear to the clear and precise requests made both by the Committee of Experts and the Committee on Freedom of Association. Trade union pluralism should be possible in practice as well as in law. The current situation was contrary to the spirit of Convention No. 87 and in practice made it impossible to accredit trade unions outside the rules established by the Government, especially in the Labour Code. Freedom of association could be exercised only in the presence of other civil rights and liberties. Governments and employers did not have the right to exercise pressure on trade unionists, who should be able to organize their activities independently and democratically. He condemned the detention and sentencing of trade union officials to heavy penalties under false pretexts.

The General Confederation of Workers (CGT) of France had already indicated its concern to the CTC over the increasingly heavy climate of repression and the detention since March of three trade union leaders. On this subject, he called for the release of those detained. Since its establishment, the CTC had defended many principles, including the abolition of capital punishment on political or penal grounds and the abolition of custodial sentences for the exercise of trade union or political activities. The calls for clemency and reasonableness made by the CGT had remained unheard. He stated that he hoped that freedom of association, of expression and of trade union and civic freedoms would be exercised without restriction very soon in practice as well as in law. The CGT of France stood behind the Cuban peoples and opposed the blockade, yet, nothing could justify the denial of the right to freedom of association in the country and he hoped that the Government would accept a direct contacts mission and the cooperation of the Office in the context of the reform of the Labour Code. He also hoped that this reform would take into account the principles set out in Convention No. 87.

**The Worker member of Italy** stated that Convention No. 87 was being violated in Cuba in law and in practice. The Committee of Experts' report had cited the recognition in law of a single trade union confederation as a violation of Convention No. 87. The ICFTU had presented a complaint concerning the heavy prison sentences imposed upon trade unionists and the fact that two security agents had infiltrated an independent trade union and had testified against the unionists in the trial. Among the 78 persons arrested and sentenced to long jail terms, there were several independent labour activists: Pedro Pablo Álvarez Ramos (CUTC), Iván Hernández Carrillo (CONIC), Carmelo Díaz Fernández (CUTC), Héctor Raúl Valle Hernández (CTDC), Oscar Espinosa Cheper (CUTC) and Nelson Molinet Espino (CTDC).

Another form of violation of freedom of association was reflected in the job practices in multinational enterprises in Cuba. There were currently some 400 economic associations involving foreign investors with nearly $1.8 billion in promised and delivered investment. Workers who wanted to work in these enterprises had to pass an ideological test foreseen in the law. The fact that workers had to be politically acceptable to be allowed to work was a clear violation of freedom of association. The ICFTU was deeply concerned over developments in Cuba and requested the immediate release of the jailed independent activists.

**An observer representing the Latin American Central of Workers (CLAT)**, speaking with the permission of the Officers of the Committee, indicated that the report of the Committee of Experts should incorporate the recent events, including the detention of various "dissidents", including four leaders of an organization of workers affiliated to the CLAT and to the WCL, and their subsequent conviction to 26, 25, 20 and 16 years of imprisonment, respectively. The accusations had been based on three allegations: (1) relations with organizations opposing the Cuban Revolution, such as the CLAT and the WCL; (2) maintaining links with officials of the United States; and (3) receiving financial aid from organizations in the above country. The second and third allegations were false and coincided with those generally used against those who opposed the Cuban Government. The leaders had received financial aid, but it had come from the CLAT and the CNV from the Netherlands. He asked whether freedom of association, of expression and pluralism were rights that could be violated by certain governments and which had to be rebuffed in view of the threat of being considered counter-revolutionary; whether justice could exist without freedom and whether, in order to function, a workers' organization had to obey the Government. He demanded that the leaders be released and allowed to express freely their disagreements in a context of civilized cohabitation.

**The Government member of the Syrian Arab Republic** fully supported the statement made by the Government representative of Cuba and emphasized that the fact that a worker was in prison did not mean that he was detained because of trade union activities and special care should be taken to verify that this was the case. He suggested that the dialogue with Cuba should continue, but without interference in the country's domestic affairs.

**Another Government representative of Cuba,** (the Minister of Labour and Social Security of Cuba) supported the truth and emphasized in the first place that there was no violation of the Convention in Cuba. To understand what was being termed a trade union monopoly it was necessary to go back to the years 1938 and 1939, when the workers chose the Confederation of Cuban Workers as their representative. Nevertheless, he indicated that a process of reform of the Labour Code was currently being carried out. He emphasized the valuable cooperation of the ILO, which was participating in this process, and indicated that the Labour Code would be brought into conformity with Convention No. 87 and other Conventions. He considered that the discussion had been politicized by certain Worker and Employer members who had confused the situ-

ation with other issues that were currently being used to demean the Cuban Revolution and undermine its resistance. There was a clear intention to destroy the Revolution. He said that the Government was obliged to apply corrective measures to traitors who served foreign interests. Nevertheless, he believed that this was not a matter to be examined by the present Committee. The persons who were being referred to had been judged and sentenced for endeavouring to destabilize the country with the assistance of a foreign power in violation of the laws of Cuba.

The history of Cuba was clear and unequivocal with regard to the participation of workers. There was no violation of Convention No. 87. The process of reforming the Labour Code would be carried out with the support of workers convened in assemblies and would be examined in Parliament, in which the various positions to strengthen the sovereign State, which was a socialist State, would be democratically discussed. He called upon the Committee to have faith and considered that it was not necessary to adopt measures of any other nature. Freedom of association and trade union democracy existed in Cuba because the Cuban Revolution safeguarded the human rights of the people of Cuba and all Cuban trade union leaders were the legitimate representatives of the workers. The Committee should not allow itself to be manipulated.

**The Government member of the United States** responded to some of the comments made by the representative of the Cuban Government and several other speakers concerning the nature of the CUTC and its alleged funding by the United States. She said that the allegations were not true. The CUTC was an independent organization affiliated with the WCL and the CLAT with close to 4,000 registered members in 14 provinces. Its leaders had been harassed, threatened and arrested because they had the courage to challenge the trade union monopoly enshrined in Cuban law. Both the Committee of Experts and the Committee on Freedom of Association had been clear and consistent in calling on the Government to repeal the provisions of its law that established this monopoly and to guarantee freedom of association in practice. The Cuban Government had consistently ignored these requests and she urged the Committee to remain strictly focused on the facts of the case.

**The Worker Member of France**, referring to the intervention by the Minister of Labour and Social Security of Cuba, said that it was totally unacceptable to insult Worker members or any other members of the Committee.

**The Employer members** noted with great surprise the position adopted by the Employer member of Cuba praising the freedom of Cuban workers and added that this Committee was not the appropriate forum to discuss the value of a revolution. With regard to the statement made by the Government representative, they noted that he had complained about politicizing the discussion and then had gone on to deliver a demagogic political speech. With reference to the statement made by the Government representative about the ongoing reform of the Labour Code, they noted that no copies of the draft law had been submitted to this Committee or the Committee of Experts. This would have been a minimum condition for a constructive dialogue and cooperation. The Government representative had also affirmed that new trade unions were being established. In such a case, a direct contacts mission would be useful and helpful to clarify the situation and promote progress in the right direction. They requested the Government to consider accepting such a direct contacts mission.

**The Worker members** indicated that information brought to the attention of the Committee, especially the detentions since last March of three trade unionists for their trade union activities, showed the relevance of the matters raised by the Committee of Experts for many years, namely the existence of a trade union monopoly in practice as well as in law and the failure to respect the principles of freedom of association. They called for the legislation to be amended, for workers to be able to choose freely their trade union organization and for the detained trade unionists to be released immediately. In view of the fact that this was a situation of constant violations of freedom of association, they also requested that a direct contacts mission visit the country in order to find solutions to the problem of the application of Convention No. 87, especially with respect to the reform of the Labour Code. They called upon the Government to consider this proposal.

**The Government representative of Cuba**, referring to the call by the Worker and Employer members for a direct contacts mission, recalled that her country had received ILO technical assistance on many occasions. Cooperation was currently being provided with regard to the amendment of the Labour Code. The Multidisciplinary Advisory Team in Costa Rica had visited the country on various occasions. This year it was planned to hold a seminar on the reform of the Labour Code with the participation of many jurists, trade union representatives and interest groups created in the country. The Labour Code was currently undergoing a process of consultation with workers. The collaboration of the ILO was appreciated, but a direct contacts mission to verify compliance with the Convention would not be accepted. Her country was complying with its reporting obligations and had always provided information to the Office. Her country accepted collaboration with the ILO, just as it had been doing up to now.

**The Committee noted the oral statement by the Government representative and the discussion that followed. The Committee noted with concern that the comments of the Committee of Experts referred to the impossibility of trade union pluralism as a result of the imposition in the Labour Code of the trade union monopoly of the Confederation of Workers, which was entrusted with the representation of workers in the country. The Committee noted that the Committee on Freedom of Association had examined cases related to the non-recognition of independent trade union organizations, as well as to threats, detentions and pressure against trade unionists. The Committee emphasized that this situation was incompatible with the provisions of Convention No. 87. The Committee emphasized the importance of the full respect of civil liberties for the exercise of trade union rights.**

**The Committee urged the Government to modify national law and practice in the near future in order to recognize the right of workers to establish organizations of their own choosing in conditions of full security, including organizations independent of the established structure, if they so wished. The Committee urged the Government to take immediate measures for the release of the detained trade unionists and the recognition of trade union organizations. The Committee also requested the Government to accept a direct contacts mission with a view to verifying the situation "*in situ*" and cooperating with the Government and all the organizations of employers and workers concerned in order to ensure the application of the Convention in both law and in practice. The Committee also requested the Government to send a detailed report for the next session of the Committee of Experts. The Committee expressed the firm hope that it would be able to note tangible progress in the near future.**

**The Worker members** stated that they fully agreed with the conclusions. In the light of the Government's attitude, they indicated that they would normally have asked for a special paragraph to be included in the report on this case. However, as it was not the Committee's practice to include such a paragraph during a first discussion, they requested that the case be included in the next report of the Committee of Experts so that it could be examined by the Conference Committee once again next year.

**The Worker member of Uruguay** expressed disagreement with the Committee's conclusions on the grounds that they were more severe than those adopted on the case of Myanmar.

**The Government representative of Cuba** expressed his disagreement with the conclusions, as they did not reflect the real situation. He therefore rejected them.

In a subsequent sitting of the Committee, **another Government representative of Cuba** stated that her Government could not accept document PV.4 for the same reason that it could not accept the conclusions, which did not take account of the proceedings and were largely not objective. The Committee's conclusions on the application by Cuba of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in her opinion, were unbalanced, included issues which went beyond the Committee's mandate, and did not reflect the diversity of the opinions expressed by the members of the Committee and by her Government. Her Government did not accept the practice followed in this Committee in this and other cases resulting in the adoption of the conclusions which only took into account the opinions of the spokespersons who, in turn, disregarded the criteria advanced by various members of their groups. It is unacceptable that the conclusions in the case of Cuba have not been subjected to any modification or adjustment in view of the diversity of opinions expressed by the members of the Committee and by the representative of the Government. She insisted on the need to revise the methods of work of this Committee in order to make the results more constructive, objective and impartial.

**The Government representatives of Venezuela, Belarus, India and Ethiopia** supported the declaration made by the Government representative of Cuba.

***Ethiopia*** (ratification: 1963). The Government supplied the following information.

During the past three years, the Government and the social partners have jointly undertaken the review of the Labour Proclamation, with due attention given to the need to bring the law into conformity with the provisions of ratified ILO Conventions. The resulting amendments, including those pertaining to the case before the Committee of Experts, are now before the Council of Ministers,

which is expected to present its recommendations to Parliament for enactment into law.

**1. Article 2 of the Convention. Right of workers without distinction whatsoever to join an organization of their own choosing**

The draft amendment contains, in line with the Committee's recommendation, new provisions which allow union diversity in an undertaking, and which read as follows:

> Sub-Articles (1) and (2) of Article 114 are hereby deleted and replaced by the following new sub-Articles (1) and (2), and the following new sub-Article 7 is added to this Article.
>
> 1. A trade union may be established in an undertaking where the number of workers is ten or more, but the number of workers in a trade union should not be less than ten.
>
> 2. Workers who work in undertakings which have less than ten workers may form a general trade union, provided, however, that the number of the members of the union shall not be less than ten.
>
> ...
>
> 7. Notwithstanding sub-Article 4 of this Article, any employer may join an established employers' federation.

**2. Article 2 and 10. Restrictions on the right to unionize of teachers and civil servants**

The new law for state administration employees has already been issued and entered into force. The Constitution fully guarantees the right to freedom of association. Accordingly, teachers are free to form associations and promote their occupational interests and, of course, they are exercising such rights. Those teachers who are working in government institutions are governed by the Civil Servants Law, while those working in private undertakings are governed by the Labour Law.

There are also specific laws and regulations which govern the employment conditions of the judges and prosecutors. These include the Judicial Administration Commission Establishment Proclamation No. 24/1996 and the Federal Prosecutor Administration Council of Ministers Regulations No. 44/1998.

**3. Article 4. Administrative dissolution of trade unions**

With regard to this issue, the draft amendment would vest the power of cancellation in the courts, and therefore an administrative agency does not have the authority to dissolve trade unions. The amendment agreed by the Council of Ministers reads:

> Article 120:
>
> The Ministry may apply to the competent court to cancel the certificate of registration of an organization on any one of the following grounds (as contained in section 120(a)-(c)).

**4. Articles 3 and 10. Right of workers' organizations to organize their programme of action without interference by public authorities**

With regard to the ban on strikes, the draft amendment of the Labour Law has excluded most of the services mentioned by the Committee from the list of essential services, except very few which are considered as essential, taking into account the particular circumstances prevailing in the country. In Ethiopia such services are underdeveloped and no other alternatives exist from the private sector. Ethiopia's current limited resources and the underdeveloped infrastructure cannot afford interruptions of such services which would have a devastating impact on the economy and the well-being of the society. The amendment agreed by the Council of Ministers reads:

> Sub-Article 2(a), (d), (f) and (h) of Article 136 are hereby deleted and Sub-Article 2(a), (d) and (h) are replaced by the following new sub-Article 2(a), (d) and (h), and sub-Article 5 is hereby deleted and replaced by the following new sub-Article 5.
>
> a. air transport;
>
> d. urban bus services and filling stations;
>
> h. telecommunication services.
>
> ...
>
> 5. "Strike" means the slow down of work by any number of workers in reducing their normal output on their normal rate of work or the temporary cessation of work by any number of workers acting in concert in order to persuade their employer to accept certain labour conditions in connection with a labour dispute or to influence the outcome of the dispute.

Concerning labour disputes, the draft amendment of the Labour Law has included a proposal that labour disputes may be submitted to the Labour Relations Board for arbitration by either of the disputing parties, but the decision of the Board may not be binding. The proposed amendments read:

> Article 153 is hereby deleted and replaced by the following new Article 153:
>
> 153 Decision of the Board
>
> ...
>
> Decision of the Board may be appealable.
>
> The following sub-Articles (1), (2) and (3) of Article 154 are hereby deleted and replaced by these new sub-Articles (1), (2) and (3).
>
> 1. In any labour dispute case an appeal may be taken to the Federal High Court by an aggrieved party on questions of law or fact, within thirty (30) days after the decision has been read to, or served upon, the parties whichever is earlier.
>
> 2. The court shall have the power to uphold, reverse or modify the decision of the Board.
>
> 3. The court shall give its decision within 30 days from the date on which the appeal is submitted to it in accordance with sub-Article 1 of this Article.

**A Government representative** (the Minister of Labour and Social Affairs) referred to the major achievements his country had recorded in implementing the principles and objectives of the ILO. To date, his country had ratified 19 ILO Conventions and with the ratification this year of Convention Nos. 29 and 182, it had ratified all the fundamental Conventions. In addition, his country was in the process of amending its labour legislation. This extensive amendment process was addressing the concerns of the Committee regarding trade union diversity, administrative dissolution of trade unions and the scope of the right to strike. He informed the Committee that the amendments to the Labour Proclamation were now before the Council of Ministers for adoption and submission to Parliament for enactment. He indicated that, in line with the Committee's recommendation, the text of the draft amendment of section 114(1)(2) permitted union diversity; section 120 completely prohibited administrative dissolution of trade unions; section 136(2)(a)(d)(h) limited the ban on strikes to only essential services rendered to the general public; the scope of the definition of "essential services" had been narrowed down to include only the most essential ones by excluding railways, banks, postal and inter-urban bus services from the list of essential services. In respect of labour dispute settlement mechanisms, the existing Labour Law stipulated that upon agreement of both parties such disputes could be settled as provided in sections 141 and 143 by conciliation or by arbitration respectively. Failing that, either party could take the case to the Labour Relations Board or the appropriate court. The decisions of the quasi-judicial Labour Relations Board would, according to the proposed amendments, become binding but subject to appeal to the Labour Division of the Federal High Court on both questions of fact and law.

He considered that, because of the progress made in the amendment process and the conviction shown by his Government in implementing ILO principles by ratifying fundamental Conventions, he expected encouragement and constructive recommendations from this Committee this year. He asked for understanding from the Committee for the delays in the adoption of the amendments, which were due to the complexity of the issues involved and various constraints confronting his Government. He assured the Committee of his Government's unreserved effort in implementing ILO principles. He also thanked the ILO for its assistance in the amendment process.

**The Worker members** recalled that this was another well-known case by the Committee that involved serious violations of trade union rights. They wished to recall the history of this case and the fact that due to the lack of cooperation by the Government in the past, the Committee had been compelled to take up this case in a special paragraph of the General Report. This case involved serious violations of Articles 2, 3, 4 and 10 of the Convention and the Committee of Experts had expressed deep regret about the lack of progress made. The Government had said more than once that legislation would be adopted soon or that it was in its final stages. However, after having heard the statement by the Government representative that Parliament would soon be able to adopt the draft legislation, the Worker members indicated that they would not insist on a special paragraph this year provided that the Government

explicitly confirmed to this Committee that they were sure that this would actually be the case before the next session of the Committee. This did not mean, however, that they were satisfied that the draft legislation presented was already considered in line with the Convention. This would have to first be examined by the Committee of Experts and discussed by the Conference committee next year.

In addition, the Worker members highlighted two other points. First, it was regrettable that the Committee of Experts remained silent on the question of the practical application of the Convention, except for where it notes the release of Dr. Taye Woldesmiate. Nevertheless, the Workers wanted to respond to a firm commitment by the Government with a positive gesture. If they would find next year that the new legislation had, once again, not been adopted despite such a promise of the Government, they would then certainly propose to highlight this failure, once again in a special paragraph. There were many other problems of application in practice such as the lack of an independent inquiry into the death of other leaders of the Ethiopian Teachers' Association as well as other cases of alleged serious interferences by the Government in trade union activities at the enterprise level, like e.g. in the Belgel-bibe Hydro Electric Company and in the Ethopian Electric Light and Power Authority. In this regard, the Worker members indicated that the Worker member of Ethiopia would be ready to discuss many similar cases which had occurred in the recent past with the ILO in Ethiopia. Finally, there was the issue of the democratically elected trade union leaders in exile who wished to return to Ethiopia. The Government should, in cooperation with the ILO, design ways and means to make sure that these people could come home. After returning to Ethiopia, these people should be able to live a life without harassment and danger to their safety and with normal opportunities to make a living. The Worker members called upon the Committee of Experts to pay more attention to the application of the Convention in practice in their next report. The Worker members decided to give the Government the benefit of the doubt and would refrain from requesting a special paragraph if the Government was able to ensure that the legislative amendments would be adopted. They further requested that the Committee of Experts give its view on the new legislation when adopted and examine the practical application of the Convention. The Government should, in cooperation with the ILO, design ways and means to ensure the safe return of the trade union leaders in exile.

**The Employer members** stated that this case had often been the subject of Committee discussions and that promises of labour law amendments being close to adoption had been heard for more than nine years now. In reference to the points raised in the observation of the Committee of Experts, they questioned whether Articles 2 and 10 of the Convention also covered judges and state attorneys. The dissolution of trade unions should be by the authority of courts and not by the administration. As for the right to strike, the Employer members reiterated their view that Convention No. 87 did not cover this right. They noted positively the release of Dr. Taye Woldesmiate, but felt that the statement by the Government representative had not changed from last year. The Government was therefore requested to indicate when the draft legislation that was to bring the national legislation into line with the provisions of Convention No. 87 would be adopted. As long as the situation remained the same, they would need to repeat the conclusions of last year.

**The Employer member of Ethiopia** commended the constructive role played by the ILO in helping the process of amending the Labour Proclamation of Ethiopia. Ethiopian employers had truly wanted these amendments because they thought they would provide the legal basis for their organizational strength as well as creating an enabling environment for investment, productivity and development for the benefit of millions of Ethiopians who lived below the poverty line. In addition to the legislative amendment, his Federation had focused on capacity building of its members to enable them to take part in the economic and social transformation of the country. Along with the workers, employers had provided practical proposals for the amendment of the labour laws. The Government responded and acted on these amendments not only to the labour laws but also to other laws such as the investment and tax laws. Nonetheless they shared the Committee's concern about the slow speed of the amendment process. He hoped that these would be adopted soon as indicated by the Minister, and that they would be the means of addressing the country's poverty. He noted a marked improvement in the attitude of the Government to recognize and work with the social partners in this great task of feeding the country. He considered that the Government needed to get some positive feedback from this Committee in its difficult efforts of transforming a centrally controlled system. He indicated that there was a need for continued ILO technical assistance to enable the Government to devote its efforts to creating an enabling environment for sustainable development of businesses.

**The Worker member of Ethiopia** recalled that the case of Ethiopia had been before this Committee for years. The concern of the Committee was the need to amend the Labour Law in order to bring it into conformity with ILO standards. His Confederation took part in bilateral and tripartite consultations that contributed to the much-needed amendment process. The process had been successful and had resulted in draft amendments that recognize the right of workers to form trade unions of their choice, that lower the number of workers required to form trade unions from 20 to ten, and that ban the administrative dissolution of trade unions. Railways, postal services and inter-urban bus services were no longer considered to be essential services. The draft amendments also guaranteed recourse by the parties to the Labour Relations Board and the courts when amicable settlement of disputes failed. Despite the accumulated delay with amendments, the recent tripartite discussions had moved the process to the Council of Ministers for its final consideration and adoption by Parliament. He thanked the ILO for its support in the labour law revision process.

**The Worker member of Austria** stated that the Worker members had presented the essential aspects of the case, including a long list of violations of freedom of association in law and in practice. However, in order to illustrate the urgency for a solution of this matter, he wished to add another serious case of practical violation of freedom of association involving the imprisonment of workers and trade union leaders of a hydroelectrical company and charged with incitement to strike. In his view, this case was not an isolated one but it reflected a situation of systematic violations where free trade unions were being hindered from fully exercising their rights, including the right to strike, especially those in "essential services". The current definition of "essential services" affected, in practice, more than 50 per cent of the workers. This was unacceptable. Having heard the statement of the Government representative that major changes had been made, he requested the Government to confirm whether, under the new draft legislation, certain sectors such as banking would still be excluded. The Government should also amend the legislation, particularly as regards the definition of "essential services", as this would determine the manner in which trade unions rights were being dealt with in the country.

**The Worker member of Senegal** indicated that it was the sixth year that this case was examined before the Committee, when the Government was requested to remove the obstacles to the enjoyment of fundamental labour rights and to the implementation of the Convention. These obstacles concerned the recognition of only one trade union per category of workers, the restrictions on the right of teachers and civil servants to organize as well as the administrative dissolution of trade unions. The release of Dr. Taye Woldesmiate and his co-defendants gave the impression that this Committee proved itself to be useful even if this case had still an unfinished aspect. Document D.8 indicated that the Government seemed to have taken on a new approach and had listened to the observations of the Committee, at least on paper. It was thus for the Government to commit itself concretely by establishing machinery that would favour the development of social dialogue and would allow exiled or arrested trade unionists to exercise their rights without any preconditions. Until now governmental behaviour had provoked hate, repression, humiliation and deprivation. A meaningful change in the social climate would depend on the announced measures as well as the nature of the commitments that the Government would take before this Committee.

**The Government member of Norway**, **also speaking on behalf of the Governments of Denmark, Finland, Iceland, Netherlands, and Sweden**, stated that last year, their Governments had expressed serious concern over the trade union situation in this country and the Government's interference in trade union activities. While noting with great satisfaction the release of Dr. Taye Woldesmiate, they continued to be concerned over the fact that the Government had been referring to the new legislation for over nine years, and that no concrete progress had been made so far. With reference to the draft legislation, it was indicated that the aim was to ensure full respect of the civil liberties essential for the implementation of the Convention. They urged the Government to provide copies of the relevant draft legislation to the ILO as soon as possible. The speaker expressed the firm hope that this draft law would be adopted in the near future, and that it would ensure full conformity with Convention No. 87.

**The Government member of Cuba** stated that the legislative process and the characteristics of each country should be respected. Ethiopia was an underdeveloped country with serious problems, including war and persistent drought. He indicated that more serious cases than Ethiopia had never been discussed before this Committee. Ethiopia had taken positive steps and therefore no serious measures should be taken against this country.

**The Government representative** said that the amendment process, as in many countries, had to go through various steps and could not always be accomplished in any country within the time frame set by the Committee. The pace would be even slower in a least developed country like Ethiopia. Despite various constraints encountered by his country the progress that had been made was significant. It was his expectation that the amendment process would be concluded as expeditiously as possible.

In respect of the alleged detention and persecution of individuals, he regretted that unsubstantiated new allegations that had no connection whatsoever with the issues in question and which had not been communicated to his Government were being introduced in this Committee. He declined to reply to these allegations. He reminded the Committee that Dr. Taye Woldesmiate was free to engage in any activity to earn a livelihood like any other Ethiopian citizen. On the issue of the property of the Ethiopian Teachers' Association (ETA), he informed the Committee that the case was currently pending in court and his Government had no authority to intervene in the judicial process. He concluded by stating that the Ethiopian Parliament would adopt the amendments to the Labour Proclamation of Ethiopia as a matter of priority when it convened in September 2003.

**The Workers members** were pleased to learn from the Government representative that the draft legislation would be adopted by Parliament in September 2003, which made it possible to move forward on this case. Therefore, they would not insist on the reference of this case in a special paragraph of the General Report, but this did not mean that they considered the legislation to be in line with the Convention. This would have to be examined at a later stage. With respect to the Government representative's statement concerning the allegations of practical implementation referred to by the Worker members and the Worker member of Austria, he wished to clarify that these were allegations, and the Office was requested to use its presence in the country to verify these allegations and to either confirm or refute them. Recalling the wish of the Ethiopian trade unions to discuss specific cases with the ILO, which was regular practice in the country, and which was within the scope of the Convention, he reiterated the hope that the Committee of Experts would give more attention to the practical application of the Convention.

**The Employer members** associated themselves with the comments made by the Worker members, but were more sceptical about the speedy adoption of the amendments. They hoped nonetheless that the draft legislation would finally be adopted by Parliament.

**The Committee took note of the written information provided by the Government and of the declaration of the Government representative, as well as of the discussion which took place afterwards. It observed that the Committee of Experts had been making comments for many years concerning serious violations of the Convention, which obstructed the right of the workers, without distinction whatsoever, to establish organizations of their own choice and the right of the trade union organizations to organize their activities without interference from the public authorities.**

**The Committee noted that the reform of the Labour Proclamation was now being considered by the Council of Ministers. It observed that it was for the Committee of Experts to pronounce on the text of the amendments prepared by the Government. Recalling with concern that for nine years the Government has been referring to the draft legislation, the Committee urged the Government to rapidly adopt the necessary modifications of the Labour Proclamation in order to bring it fully into line with the provisions of the Convention. The Committee strongly urged the Government to adopt special provisions to guarantee the right to teachers and civil servants to form unions and the free functioning of their organizations.**

**It urged the Government to provide guarantees ensuring that these workers could exercise their trade union rights in full security. The Committee addressed an urgent request to the Government to furnish, in the report due this year, detailed information on the concrete measures adopted to ensure full conformity of the national law and practice with the Convention. The Committee urged the Government to make use of the technical assistance of the ILO in order to make the draft law, to be adopted by the end of the year, consistent with the Convention. It also urged the Government to take measures to ensure the return of the trade union leaders from exile. The Committee expressed the strong hope that next year it will be able to note progress made in overcoming existing serious obstacles in the application of the Convention**.

**The Government representative** stated that the Parliament would certainly adopt the amendment, which would comprehensively address the issues raised, and which this Committee would have before it next year. He totally rejected the issue of "exiled Ethiopians", raised by the Worker members, which had no relevance to this case and which in no way should have been included in the conclusions of the Committee

***Myanmar*** (ratification: 1955). **A Government representative** stressed that Myanmar, as a country in transition, was doing its utmost to promote the rights, interests and welfare of its workers while at the same time taking appropriate steps until the adoption of a strong and enduring State Constitution. He refuted the claim that the Government had done nothing to apply Convention No. 87 and had been using delay tactics for the past 40 years. The Revolutionary Council had assumed power in 1962 and a socialist State had been instituted by referendum in 1974 and workers had been allowed to establish organizations according to the State Constitution at the time and had operated until 1988. He stressed that the fundamental political transformations and transition from one political system to another were bound to impact developments in all sectors of the country, including labour affairs. During the socialist era, the foremost priority of the people of Myanmar had been the emergence of a State Constitution, and the creation of workers' organizations could only take place afterwards. The Government was striving to establish a modern, peaceful and developed democracy according to the aspirations of the people of Myanmar. After having restored peace and stability, the State Peace and Development Council (SPDC) was turning its efforts towards political, economic and social development in order to lay down the foundations for the emergence of a strong and enduring Constitution. Reminding the Committee that all laws arose from a country's Constitution, the Government representative stressed that this included laws that aimed at the creation of fully-fledged trade unions. Therefore, all the Government could do in the period of transition was to take interim measures and build on existing mechanisms for these associations to look after the rights and interests of workers to the extent possible under the prevailing circumstances. As evidence of the steps the Government had taken in this direction, he cited the following Workers' Welfare organizations which were allegedly operating in Myanmar, including the Myanmar Guston Molinel Garment Factory Workers' Welfare Association, the Textcamp Garment Factory Workers' Welfare Association, the Yes Garment Factory Workers' Welfare Association and the Tarshin Garment Factory Workers' Welfare Association. Professional associations cited included the Myanmar Overseas Seafarers' Association, the Myanmar Women Entrepreneurs' Association, the Myanmar Dental Surgeons' Association, the Myanmar Engineers' Association, the Myanmar ASEAN Women Friendship Association, the Myanmar Writers' and Journalists' Association and the Myanmar Construction Enterprises' Association. The Government representative claimed the organizations mentioned were forerunners of trade unions, which operated in the interest of workers and to the best of their abilities under the prevailing conditions. Taking the Myanmar Overseas Seafarers' Association as an example, he pointed out that the organization had been freely formed by the overseas seafarers, had freely elected officers on its Executive Committee and freely exercised its activities in the interests of its members. He likened it to a trade union and stated that the Government had deposited a copy of its Constitution with the ILO. He maintained this was a major step towards implementing Convention No. 87.

The Government representative stated that the existing mechanisms for the safeguarding of workers' rights were working well in Myanmar and that complaints of trade disputes had been dealt with effectively and peacefully through conciliation and negotiation. He explained that, in 2002, the Department of Labour had received 92 complaints of trade disputes from 60 factories and workplaces with a combined total of 29,054 workers, 14,202 of whom had been directly involved, and that all the cases had been settled through negotiation and conciliation processes.

Reiterating the fact that the Government was doing all in its power to progress towards implementation of the Convention, the speaker pointed out that the Government had been receiving technical assistance from the ILO in this respect, including the visit to Myanmar of Standards Department officials. The speaker stated that the Government was cooperating with the ILO in the implementation of the Forced Labour Convention (No. 29), 1930, and had been making great progress, citing the agreement, recently concluded with the ILO, on the Joint Plan of Action for the elimination of forced labour. This agreement, in the speaker's view, was a model in the field of human rights and should be applied to Convention No. 87. ILO technical assistance in this matter would make way for further positive ILO-Myanmar cooperation.

The speaker explained that the Government had consulted the ILO on how to strengthen workers' welfare associations and on other ways of advancing the matter. On 20 May 2002, the Myanmar delegation had discussed Convention No. 87 with the Director-

General and other ILO staff, and since then, there had been regular contacts with the Standards Department.

In conclusion, the Government representative emphasized the importance of the role of the ILO in helping member States implement core ILO Conventions and said that it should refrain from censuring States which were genuinely attempting to comply with the Conventions. The speaker hoped that the Committee understood the position of the Myanmar Government and that discussions and cooperation with the ILO would lead to fruitful results towards implementing their obligations.

**The Worker members** stated that, although the Committee of Experts' observation was brief, the case of Myanmar was well known given that it had been discussed at the Conference 15 times in the past 22 years, and even before the Commission of Inquiry had been established concerning the violation of Convention No. 29 by Myanmar. On Convention No. 87, a special paragraph had been set aside on the case on eight occasions, five of which were for continued failure to apply the Convention. They pointed out that this was the only case, among many concerned with the application of Convention No. 87, which focused on the total absence of freedom of association over a prolonged period of time. These violations of freedom of association occurred in a political climate of severe repression by the military regime, of human rights and other fundamental freedoms, as the tragic events of the last two weeks had shown. Many of these violations had been brought to the attention of United Nations bodies, including the ILO, and the situation was being followed closely by the Commission on Human Rights, the UN Secretary-General, the General Assembly and the Committee on the Rights of the Child, which deplored "the pattern of gross and systematic violations of human rights in Myanmar, including extrajudicial, summary and arbitrary executions, enforced disappearances, rape, torture, inhuman treatment, denial of freedom of assembly, association, expression, religion and movement" (Commission on Human Rights resolution 2002/67, paragraph 5(a), General Assembly resolution A/RES/56/231, paragraph 4). In February 2003, the General Assembly expressed again its grave concern "at the ongoing systematic violation of the human rights, including civil, political, economic, social and cultural rights of the people of Myanmar; extra-judicial killings, renewed instances of political arrests and continuing detentions, including that of prisoners who had served their sentences; denial of freedom of assembly, association, expression and movement; wide disrespect for the rule of law" (General Assembly resolution A/RES/57/231, paragraph 3(a) and (b)).

The Worker members recalled that on 28 May 2003, the ICFTU had filed a 33-page complaint with the ILO, with over 150 pages of attachments, against the regime for violations of freedom of association. In its first section the complaint focused on the legislative framework used by the regime to suppress freedom of association and, in its second part, denounced new cases of violations which confirmed the military regime's persistent and systematic pattern of violations of the right to freedom of association. They requested the Committee of Experts to review the detailed information provided by the ICFTU for its report next year, as well as any response the Government might provide. They also pointed out that because of arbitrary and artificial restrictions of time, some Workers' delegates would refrain from intervening. In due time, the interested organizations would submit their observations to the Committee of Experts and the Government should also respond to their concerns.

The Worker members also urged the Committee of Experts, to devote special attention to the section of the ICFTU comments, which had not yet been completely reviewed by them, on new information concerning a legislative framework for the suppression of freedom of association. They reiterated that, despite the repeated statements of good intention by the Government that drafting of new legislation allowing the free and independent establishment of workers' organizations, was under way, absolutely no progress had been made.

The Worker members recalled that Mr. Maung Maung, the General Secretary of the Federation of Trade Unions of Burma (FTUB), together with other workers who had attempted to organize an independent union in a state-owned mining company in the late 1980s, had been dismissed, threatened and forced to flee the country after the military crackdown of August 1988. The FTUB was considered by the military regime to be a subversive organization and any worker linked to it was at tremendous personal risk. Nevertheless, the FTUB continued to function underground around the country, and helped to organize and expand relations with new independent trade unions in a number of diverse ethnic communities, giving rise to some of the first democratic structures in these communities. The fact that the FTUB, which was recognized as a legitimate trade union around the world, was considered to be a subversive organisation by the regime, dramatized the total absence of freedom of association in Burma. Although the Government representative claimed that the Workers' Welfare Association and the Workers' Supervisory Committees were a form of freedom of association, the Committee of Experts agreed with the Worker members that neither of these could substitute for the fundamental right to organize provided for in the Convention.

The Worker members recalled that the two FTUB representatives, who had been arrested in 1997 and convicted for high treason at secret trials, had not been seen since, and therefore requested the Government representative to provide a report on their whereabouts and well-being. They were still waiting for a response regarding Saw Mya Than, another FTUB member, whose murder, on 4 August 2002, had been reported to the ILO and raised by the ILO liaison officer before the Government Implementation Committee on 9 November 2002, to which there had been no response from the Government.

The Worker members stressed that they would consider any attack on Mr. Maung Maung in the context of the violent crackdown of the last two weeks as a threat to his well-being and requested the Committee to stress in its conclusion that such attacks were unacceptable. In conclusion, the Workers informed the Committee of the approval by the United States Senate, of the Burma Freedom and Democracy Act, in response to the ambush of Ms. Aung San Suu Kyi on 30 May 2003 and the subsequent crackdown on the National League for Democracy (NLD) countrywide. The Bill was on its way to becoming law and the Worker members called on other nations to take similar actions until the military regime in Burma released all political prisoners, provided a full account of the 30 May 2003 events, and returned to a path of political reconciliation. Only then would there be a climate for progress towards the protection of workers' and employers' rights to freely organize in accordance with Convention No. 87.

**The Employer members** recalled that the Committee had dealt with this case eight times in the last ten years and that the Government had claimed for eight years that it was in the process of elaborating a new Constitution and new laws, including a trade union Act. However, no factual development had been noted so far and the Government had also failed to provide such information at the present session of the Committee. The Government representative once again referred to a number of existing organizations which, as he admitted, were only surrogates to real trade unions as provided for in the Convention. There was no freedom to join and establish organizations without interference and prior authorization. Noting that no information had been submitted on the manner in which the legislative measures were undertaken, the Government was requested to submit existing draft laws to the Committee of Experts. If the Conference Committee considered the statement of the Government representative to express its willingness to take further measures, this should be noted. In response to the Government representative's referral to Convention No. 29, in respect of which the ILO had to take measures under article 33 of the ILO Constitution, the Employer members hoped that it would not be necessary to follow such a stony path with regard to Convention No. 87. However, changes in law and practice to bring it in conformity with the Convention had not yet been achieved and restrictions and interference by the State continued. The Committee should therefore urge the Government once again to take the necessary measures.

**The observer of the International Confederation of Free Trade Unions (IFCTU)** informed the Committee that in 1988, he was elected President of the Myanmar Gems Corporation Union and President of the All Burma Mining Union. He had participated in the All Burma Workers' Union Congress held at Htan Ta Bin high school in Rangoon on the 30 August 1988. On 18 September 1988, the military staged a coup and announced that all workers on strike should return to work and issued Order No. 6/88 which denied Freedom of Association by imposing a penalty of five years' imprisonment. The speaker declared that he returned to work with the rest of the members, but on 24 October 1988, the corporate administration called in six leaders of the union, including himself, and informed them not to go to work the following day. The speaker left the country to avoid arrest, imprisonment and torture as the Military Intelligence had been looking for him. He stressed that although independent trade unions existed in Burma, their members had been forced into exile. Furthermore, unions were denied the right to register, could not operate openly, and had to work underground. Trade union members risked reprisal, arrest and detention by the authorities if their activities were discovered. In October 1990, U Maung Ko, the secretary-general of the Port Workers' Union had been arrested and imprisoned at Insein Jail. On 9 November 1990, his family had learned of his death through the workers at the Rangoon General Hospital. The authorities claimed that he had taken his own life after confessing to his activities, but neither the confession nor the circumstances under which it had been

extracted have been revealed. An FTUB eyewitness who had seen U Maung Ko's body before burial asserted that the many marks were proof of torture. The speaker also indicated that the cases of Myo Aung Thant, Khin Kyaw, Thet Naing and Myint Maung Maung, that had been discussed at the Conference Committee in 1999 and 2001, had not yet been resolved. They were still in prison for trade union activities. He also mentioned the case of Aye Aye Swe who was arrested in 1998 and sentenced to seven years in prison for trade union activities.

The speaker stressed that in Burma, any form of labour organizing was immediately repressed and labour disputes were settled through the immediate intervention by the police and the military imposing harsh criminal actions on the pretext of national security. Workers were intimidated, threatened or violently repressed. Workers were accused of being the communist tools of imperialists and terrorists. Military and police interventions usually led to violations of basic human rights, including beatings, torture, arrests and detentions with no guarantee of a fair trial. The speaker insisted that in such a climate of violence and repression and in the absence of the right to organize, forced labour could not be eliminated. He called upon the ILO to help them build independent representative trade unions to contribute to the well-being of the population of Burma.

**The Government member of China** encouraged the Government of Myanmar to cooperate with the ILO to comply with Convention No. 87.

**The Government member of Norway, speaking on behalf of the Government members of the Nordic countries as well as of the Netherlands and Canada**, expressed their continuing deep concern over the trade union situation in Myanmar and recalled that the Conference Committee had commented on the Government's failure to apply Convention No. 87 for several years. No real progress had been made in providing a legislative framework under which free and independent workers' organizations could be established. The speaker urged the Government to adopt the necessary measures to fully ensure the fundamental right to organize and to send, with its next report, copies of any proposed revisions of the Trade Union Act.

**The Government member of the United States** stated there was an inextricable link between the fundamental right to freedom of association and the issue of forced labour discussed during the special sitting of the Committee. The High-Level Team, which visited Myanmar in September 2001 with respect to Convention No. 29, had reported that if strong and independent workers' organizations, as required by Convention No. 87, existed in Myanmar, these could provide individuals affected by forced labour with the framework and collective support necessary to help them make the best possible use of all remedies available to defend their rights. It was thus crucial for the international community to remain focused on Myanmar's failure to apply Convention No. 87. The Government representative noted that, in response to the repeated appeals to the Government to take the necessary measures, the Committee once again heard promises regarding revised laws and a new Constitution, as well as explanations about workers' associations that are a surrogate of trade unions. Nonetheless, the fact remained that no real progress had been made. Her Government deplored the continuing lack of will to respect obligations freely undertaken and the recent events in Myanmar further demonstrated the Government's unwillingness to respect freedom of association. The Government of the United States called for the immediate release of Ms. Aung San Suu Kyi and other detained NLD members, and for the reopening of the NLD offices without delay.

**The Government representative** wished to clarify the circumstances of the death of Mr. Saw Mya Than. The Myanmar authorities had carried out a thorough investigation into this case. The investigation found that Saw Mya Than was from the village of Kalaikatoat in Ye Township. He did not belong to any lawful association of education workers. The Kawthoolei Education Workers' Union was an unlawful underground organization affiliated with the Karen National Union (KNU) which was the only remaining insurgent group in the country. He was not an elected headman of the village, as claimed by the FTUB. In fact he was employed by the army as a guide, not as a porter. On 4 August 2002, Saw Mya Than was accompanying an army column as a guide. When the army column reached a location about five miles from the village, a small group of KNU insurgents detonated a Claymore mine by remote control. In that incident, Saw Mya Than was killed instantly. The army column retrieved his dead body and handed it over to his family. It also assisted in organizing the funeral service for Saw Mya Than. Moreover, it gave due compensation to the members of his family. In fact, members of the bereaved family were quite satisfied with the kind assistance and sympathetic gesture extended to them by the army. It was therefore crystal clear that the allegation from the FTUB was an unfounded allegation, fabricated with political motivations.

With regard to Mr. Maung Maung, the Government representative alleged that he had once again abused the Committee. The same had happened at the meeting of this Committee on 7 June 2003. At that time he had informed the Committee that Mr. Maung Maung was a criminal, fugitive from justice and a terrorist. The speaker wished to place on record, once again, a strong protest of his delegation against the abuse of this Committee by the same person.

Turning to recent events, he stated that since the lifting of restrictions on Daw Aung San Suu Kyi on 6 May 2002, she had been allowed to travel freely through the length and breadth of the country. Between June 2002 and April 2003, Daw Aung San Suu Kyi had visited 95 townships. On 30 May 2003, she and her supporters in a long motorcade with over 100 motorcycles drove with high speed and ploughed through the crowd at a location outside Depeyin Township, resulting in injuries to many people. This led to clashes between the local populace and her supporters. Four persons were killed, and 48 persons injured. After she made a second trip to the Shwebo region after her visit to Mandalay, disturbances occurred at a location outside Depeyin Town on 30 May. He maintained that there was premeditation on the part of Daw Aung San Suu Kyi, but not on the part of the Government.

He recalled that, during the course of the present session of the Committee, he had said that Daw Aung San Suu Kyi was unhurt and that she did not have even a bruise. He indicated that Mr. Razali Ismail, Special Envoy of the United Nations Secretary-General, had said in a press interview that "I can assure you that she is well and in good spirits ... no injury on the face ... no scratch, nothing". He wished to stress that the authorities had to take necessary measures to ensure the safety of Daw Aung San Suu Kyi and other members of the NLD. These measures were temporary in nature. The Government would continue its policy of national reconciliation and its policy of transition to democracy in a systematic and step-by-step manner.

In conclusion, the Government representative stated that Myanmar's track record on the elimination of forced labour had shown sustained and significant progress. The role of the International Labour Organization should be to assist its member States in the implementation of the ILO core Conventions, and not to assume the negative role of censuring a member State which had a genuine intention to implement the core Conventions of the ILO but had to overcome certain constraints and difficulties.

**The Worker members** requested that the Government provide the Committee of Experts with all the legislative texts pertaining to freedom of association. Furthermore, in the light of recent events in the country, they once again pleaded with the Government for the release of Ms. Aung San Suu Kyi and to allow the reopening of all the offices of the NLD so that a dialogue of national conciliation could be taken up again. They requested that the new conclusions contain the same elements as those adopted in 2001. In response to the arguments of the Government representative that change takes time and that things cannot change overnight, they reminded the Committee that it had been making the same comments for more than 40 years regarding the failure to apply Convention No. 87 in law and in practice. Based on these observations, they requested the conclusions be included in a special paragraph of the report and that, furthermore, they reflect the continuing failure to apply the Convention.

**The Employer members** noted that, while there were some signs of incipient progress with regard to the application by Myanmar of Convention No. 29, which had again been discussed during a special sitting of the Committee, this was not at all the case for Convention No. 87. The Government again provided only general information and had not referred to any specific measure taken. The Employer members therefore agreed with the Worker members that a special paragraph on this case should be included in the Committee's report, making reference to the continued failure to apply the Convention.

**The Committee noted the statements by the Government representative and the discussion which followed. It recalled that the Committee had discussed this serious case on many occasions in the last ten years and that its latest conclusions had been included in a special paragraph because of the continued failure of the Government to apply the Convention.**

**Notwithstanding, the Committee was once again obliged to note the lack of real progress towards the establishment of a legislative framework for the creation of free and independent organizations. The Committee profoundly deplored the persistence of serious discrepancies between national legislation and the provisions of the Convention which had been ratified almost 50 years ago. The Committee regretted that the information provided by the Government**

**on the existence of workers' associations had not solved the problems raised by the Committee of Experts towards implementing the Convention.**

**Concerned about the total lack of progress towards implementing this Convention, the Committee strongly insisted once again that the Government urgently adopt the necessary measures and mechanisms for guaranteeing, both in law and in practice, the right of workers and employers to affiliate themselves with the organizations of their own choosing, without previous authorization, and the right for these organizations to affiliate themselves with federations, confederations and international organizations without the interference of state authorities. The Committee emphasized that respect for civil liberties was crucial for the exercise of freedom of association and therefore urged the Government to take the necessary measures so that workers and employers could exercise the rights guaranteed by the Convention in a climate of full security and in the absence of threats or fear. Furthermore, the Committee urged the Government to provide the Committee of Experts, next year, with all relevant draft legislation and existing legislation so that it could be studied, and to provide a detailed report on the concrete measures taken to ensure improved compliance with the Convention. The Committee expressed the firm hope it would be able to note significant progress next year.**

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

**The Government representative** stated that in the light of the full cooperation and genuine good will expressed by the Government of Myanmar, the Committee should not have decided to include this case in a special paragraph. The Government representative reserved his delegation's position on the conclusions adopted, in particular on the elements concerning the political situation in the country.

***Panama*** (ratification: 1958). **The Government representative** stated that according to the Committee on Freedom of Association, the recognition of the right of freedom of association did not necessarily imply the right to strike and that this right could be subject to restrictions, including prohibitions, relating to the public sector or essential services. Section 452 of the Labour Code, as amended by the Act No. 44 of 1995, which did not contravene the pronouncements of the Committee on Freedom of Association, was aimed at avoiding interruption of public services and to submit, shortly after the beginning of strike, the collective dispute to arbitration, as a modern and practical mechanism in those enterprises of public services which had been listed in section 486 of the Labour Code.

His Government believed in joint action and in tripartism, which was the reason for the existence of this organization. Public servants pursuing administrative careers could create or join associations of public servants of socio-cultural and economic nature in their respective institutions, which were aimed at the promotion of studies, training, improvement and protection of its members. It was also justifiable that public servants had the right to choose and to join the associations of their choice.

Under the legislation of Panama, trade unions of workers or professionals could be established with a minimum of 40 members, and the employers' organizations could be established with a minimum of ten members who should be totally independent from each other. This provision, agreed upon in 1995, had recently entered into force, and was applied in the Republic of Panama in an effective and efficient way without any problems. Section 64 of the Constitution of Panama provided that Panamanian nationality had been required for a person to serve on the executive board of a trade union. In order to change this, it was necessary to amend the constitutional provision. With respect to strikes and the obligation to maintain minimum services with 50 per cent of the personnel in establishments that provided essential public services, for these services to be considered as "essential" for the population, it must be shown that these services could not be interrupted without causing damage. In his opinion, there had been no interference of the legislative body in the activities of employers and workers. The Labour Code provided that, in case of strikes in public service establishments, the general or regional directorate of labour should decide whether to submit the strike to arbitration after its commencement; the party could then appeal the decision to the Minister of Labour and Social Development.

The Government of Panama maintained its firm political will to comply with all standards of the ILO. In the case of amendments to the Labour Code that were requested by the trade union committee, this implied that modification of the national Constitution was needed. However, important efforts had been made of analytical reconciliation of the various national sectors.

**The Employer members** stated that this case referred to many issues and that they wished to comment only on a few of them. As the right to strike did not derive from the provisions of Convention No. 87, they did not wish to refer to them.

First, referring to the power of the regional or general labour directorate to submit labour disputes in public enterprises to compulsory arbitration, the Employer members considered that this did not violate the Convention even though one would see this practice as government interference in the right to strike. However, the practice of compulsory arbitration represented an interference in the right to voluntary collective bargaining promoted under Convention No. 98. Recalling the position of the Committee of Experts recognizing that the State may interfere, under certain conditions, in collective bargaining in order to help to find a consensus between the social partners, they felt that, in Panama, the State may interfere whenever it considered necessary – which was only possible under limited conditions.

Coming to the issue of legislative limitation to one union per institution, that under national legislation, there shall be not more than one association in an institution, and the issue of limitation to one chapter per province for unions, these were clear violations of the Convention. Noting the indication given by the Government representative that this provision had been adopted in collaboration with the existing trade union and associations, the Employer members considered that this provision obviously served the objectives of the existing trade unions and associations only, since on the basis of this legislation, an existing trade union would not have competing unions and that the employers were to negotiate with one trade union only.

The Employer members stated that the requirement of Panamanian nationality for service on the executive board of trade unions constituted a clear violation of the Convention. They recalled that the Committee had already dealt with this problem on several occasions. The legal requirement of a minimum of 50 public servants to be able to establish an organization of public servants provided by the Act respecting administrative careers, clearly constituted another violation of the Convention. In their view, the reduction of the number of public servants required from 40 to 20, announced by the Government representative, would still violate the Convention in so far as this amendment would not lead to any improvement in this respect. The prohibition of public servants' organizations from affiliating with other organizations was an interference in the internal freedom of organizations, which constituted another violation of Convention No. 87.

The Employer members considered that the provisions of the Labour Code, that provided for the closure of the enterprise in the event of a strike, did not concern the right to strike. It was more a violation of the right to economic activity. The State's decision to close an enterprise in the event of a strike represented a massive interference in collective bargaining since the employer did not have the possibility to continue production with those workers who did not wish to participate in the strike.

A final point raised by the Employer members, and which was not reflected in the comments of the Committee of Experts, concerned the issue of payment of wages during a strike. They recalled that in 2000, the Conference Committee had treated the case of Panama in relation to the application of Convention No. 98. In its comments, the Committee of Experts had referred to the comments of the Committee on Freedom of Association but had omitted to comment on a law providing for the obligation of the employer to continue to pay the wages for the duration of the strike. Although issues concerning the right to strike did not derive from the provisions of Convention Nos. 87 and 98, they had been dealt with by the Committee of Experts in their comments under Convention No. 87 for Australia. In the case of Australia, the problem was different, i.e. the Australian law prohibited the employer from paying wages for the period of the strike. In this case, the Committee of Experts rightly said that the payment or non-payment of wages for the duration of the strike had to be the result of collective bargaining, and thus not the subject of legal provisions. However, the issue had to be dealt with under Convention No. 98 and not under Convention No. 87. As the Committee of Experts by chance had omitted to deal with this issue in the case of Panama, the Employer members felt it was important to raise this question and requested the Government representative to clarify whether the legal provisions concerned were still in force; if this was the case, they called upon the Government to repeal them rapidly.

**The Worker members** referred to the observations of the Committee of Experts which, for over 30 years now, had raised the following points: the exceedingly high minimum number of members required to form a professional organization; the requirement that trade unions had to have a minimum of 75 per cent Panamanian members; the automatic suspension of a trade union leader upon dismissal; the extensive powers of control by the authorities over the registers, records and accounts of trade unions; and the exclu-

sion of civil servants from the scope of the Labour Code, which failed to recognize their right to form trade unions and to bargain collectively. Already this year, there was a feeling of "déjà-vu", which undermined the credibility of the supervisory system. The situation was serious and it was time that the Government of Panama stopped mere statements in this Committee and started fulfilling its obligations under the Convention in an effective and sincere manner.

**The Worker member of Colombia** stated that in Panama the right to strike was being violated in sectors that were not part of public essential services. In this regard, he referred to the transport services at the Panama Canal.

**The Government member of the Dominican Republic** stated that the Government of Panama had to bring the national legislation into conformity with Convention No. 87 on freedom of association. He recalled that the Government had expressed its interest in receiving the technical assistance from the ILO so that, within the framework of a social dialogue and the consensus promoted by it, the participants would undertake measures benefiting all parties involved.

**The Worker member of Panama** stated that between 1903 and 1972 not a single legitimate strike had been carried out, even though the right to strike was set out in the law. With trade liberalization, the Government and employers were endeavouring to promote the country through labour flexibility to make it attractive to foreign investment. The obstacles to the establishment of trade unions in areas characterized as strategic was a reality in his country. This was the case of the free zone of Colonia, the banking centre, which had over 150 international banks, and public sector workers. In the areas such as ports, compulsory arbitration was imposed because they were considered to be public services. Tribunals had been established in parallel to the labour courts to receive complaints from port workers, thereby excluding them from the scope of the Ministry of Labour and depriving them of the right to strike. The Department of Social Organizations was a type of regulatory body for the establishment of trade unions, and an excessively high number of members were required to establish trade unions, while migrant workers were prohibited from holding trade union office. A new constitutional provision had been adopted prohibiting strikes in the Panama Canal zone on the grounds that it was an international public service. Employers in Panama were trying to extinguish any right to strike by insisting on amendments to the Labour Code that would make it possible in future to hire workers, produce and sell products while workers were on strike. Finally, he called for any reform of labour legislation to be a result of dialogue and consensus, and not to be imposed by the Government or employers.

**The Government representative** stated that his Government respected the ILO Constitution as well as the national Constitution and the labour legislation of his country, that aimed to resolve conflicts between workers and employers. The freedom to establish trade unions had existed in Panama, with certain requirements that the existing organizations observed in their integrity. He indicated that they were present in this Committee not to resolve internal disputes and to appeal to the social partners to pursue national dialogue in order to find solutions.

**The Employer members** recalled that they had clearly pointed out their position in their initial statement. They deplored that the Government representative did not refer to the question of the employers' obligation under the legislation to continue to pay wages during the strike. Therefore, they would consider raising this issue again at next year's Conference. They noted with interest that two worker members criticized the closure of an enterprise in the event of a strike. This practice was not only an interference by the State in the freedom of an employer's economic activity, but it also forced the non-striking workers to a compulsory solidarity in this regard. The Employer members thought this was an interesting and instructive outcome of the discussion. They expressed the hope that the Government representative might wish to refer to this issue in the light of the discussions previously held in this Committee.

**The Worker members** stated that the Government had not given any reply to the numerous questions raised. Consequently, they had nothing to add.

**The Government representative** stated his respect for the procedures of the Committee and in this context he wanted to indicate that the question posed by the Employer members did not concern the points raised by the Committee of Experts. If the Employer members wished, his Government could respond to any questions that were addressed to it.

**The Committee noted the oral information communicated by the Government representative and the ensuing discussions. The Committee observed with concern that for years the Committee of Experts has been noting serious discrepancies between the national law and practice, on the one hand, and the Convention on the other. These problems of application related to the following points: a single trade union imposed by law in the public sector, the requirement of too many members to form workers' or employers' organizations; interference in the internal affairs of workers' and employers' organizations, including the right to freely elect their representatives; the handling by law of certain issues which should be handled by collective bargaining procedures; sanctions in the case of collective bargaining agreements and disaffiliation of an organization of public servants from a confederation by administrative decision. The Committee took note of the statement by the Government that a bill has been prepared to ensure full respect of the rights of workers in export processing zones. The Committee noted furthermore, the willingness expressed by the Government to solve the problems of application of the Convention through a dialogue with the social partners. The Committee regretted to observe that no concrete progress had been made with respect to the application of the Convention, and expressed the firm hope that the Government take all the necessary measures, in close cooperation with the social partners, in order for the workers' and employers' organizations to be able to organize their activities without inference of the public authorities. The Committee reminded the Government of the possibility to request technical assistance from the Office in order to overcome the serious problems in the application of the Convention. The Committee urged the Government to send detailed and specific information on the measures taken, including any new bills or legislation adopted, in its next report, so that the Committee of Experts could examine again the situation in law as well as in practice.**

***Serbia and Montenegro*** (ratification: 2000). **A Government representative** stated that according to section 5, paragraph 2, of the Labour Law, in force since 21 December 2001, the term "association of employers" meant an organization that the employers joined voluntarily for the purpose of promoting their interests. Therefore, this provision indicated that the membership in employers' associations was voluntary. According to section 136, paragraph 1, of the Law, a collective agreement must be concluded between the employer or the representative association of employers and the representative trade union. Therefore, the Chamber of Commerce and Industry did not participate in collective bargaining, this being the role of the voluntary association of employers.

The speaker added that the Social-Economic Council had been established with the agreement of the social partners. The agreement had been concluded on 1 August 2001 between the Government of the Republic of Serbia, three trade unions (ASNS, United Branch Trade Unions "Nezavisnost" and the Independent Trade Unions of Serbia – SSSS) and the Union of the Employers of Serbia. The Chamber of Commerce and Industry was not a member of the Social-Economic Council nor did it participate in collective bargaining. At the invitation of the Minister of Labour and Employment and as agreed by the social partners, the Chamber of Commerce and Industry was present at council sessions as an observer. The presence of the Chamber of Commerce and Industry had been positive since the process of privatization had not yet been completed and a number of companies were still publicly owned. With regard to Chapter 6 of the Law on the Chamber of Commerce and Industry of Yugoslavia, he wished to inform the Committee that the Law repealing the Law on the Chamber of Commerce and Industry of Yugoslavia had entered into force on 4 June 2003. By this, the Law on the Chamber of Commerce and Industry of Yugoslavia had been repealed.

**The Worker members** stated that it was important to take into consideration the outstanding role of the social partners and the enhancement of the social dialogue in the development of the new legislative framework and the social and economic development of the country, especially in light of the plan for privatization of all publicly owned enterprises. As mentioned in the conclusions of the Committee on Freedom of Association, the Federal Republic's Law on the Yugoslav Chamber of Commerce and Industry set restrictions that should be removed in order to grant freedom of association in accordance with Convention No. 87, which was a key instrument promoting social dialogue and ensure the participation of the social partners in the reconstruction of a democratic State. The Worker members supported the comments of the Committee of Experts which requested the repeal of all the provisions that limited the right to organize. Freedom of association should be granted fully by eliminating all obstacles that hindered trade union registration and undermined such a right. Workers had the right to organize in most sectors but the procedures to implement such rights in many cases prevented the exercise of this right. The Worker members made reference to specific cases where the trade unions encountered obstacles towards the implementation of such rights. Therefore, all forms of government administrative interference in trade

union matters should be stopped. They understood that the Government had asked for assistance to prepare the draft trade union law and that one of the conclusions of the recent ILO mission was that the registration procedures should be simple and short and not used to undermine the right to organize. It seemed that the Government wished to use the same criteria for registration and representation, which were totally different issues. Another still pending problem was the allocation of trade unions assets.

In conclusion, it was stressed that the process of legislative revision needed to be accelerated in full consultation with the social partners and that all potential restrictions or administrative obstacles to the right to organize should be removed by the new law, thus creating the condition for the full implementation of this right. The ILO was requested to continue to support this process.

**The Employer members** recalled that this case was particular for several reasons. It was a pure case involving employers' rights emanating from Convention No. 87. For a number of years, the Committee considered it to be a violation of the Convention where a national law indicated a specific trade union in the text itself. This was a clear violation of the right to freedom of association, as the establishment of another trade union or association would be a breach of the national law in question which only recognized one trade union. The Employer members recalled that the Yugoslav Chamber of Commerce and Industry exercised by law the powers of employers' organizations within the meaning of the Convention. In addition, the Federal Republic's law on the Yugoslav Chamber of Commerce and Industry established compulsory membership in the Chamber of Commerce. Although it was customary in many countries to establish a compulsory membership in the respective chambers of commerce, it was not acceptable that the chambers of commerce exercised the functions of employers' organizations. If the ability of collective bargaining belonged exclusively to the chamber of commerce, this would violate the core functions of employers' associations. They considered that the new laws referred to by the Government representative seemed to go in the right direction. However, it was not possible to determine the extent to which the new laws would solve the problem, since the Committee had not examined the laws the Government representative referred to. Therefore it was necessary that the new laws be transmitted to the Office for examination by the Committee of Experts. With reference to the intervention of the Worker members, the Employer members stated that while it was clear that this Convention concerned both the freedom of association of workers and employers, the basis for discussions of this case were the comments of the Committee of Experts, which referred exclusively to the problem of freedom of association of employers.

**The Government representative** thanked the Worker and Employer members for their comments. Serbia and Montenegro would provide the text of the new legislation to the Office and appreciated the assistance from the ILO on the matter discussed.

**The Worker members** stated that they had found it important to raise some of the key points that the workers had highlighted during the ILO mission. It was important that Convention No. 87 was not only enshrined in the new legislation but was also applied in practice. Moreover, in the context of social dialogue, workers and employers should be treated on an equal footing.

**The Employer members** did not wish to add anything to their initial statement except to emphasize that the voluntary exercise of collective bargaining was of importance and should be reflected in the conclusions.

**The Committee took note of the statement made by the Government representative and of the subsequent discussion. The Committee of Experts had pointed out that the Federal Republic's Law on the Chamber of Commerce and Industry is contrary to Article 2 of the Convention, as it limited the employers' right to establish and join organizations of their own choosing by imposing on them compulsory membership of the Chamber. The Committee noted the Government's statement that the Chamber of Commerce and Industry had been dissolved. The Committee expressed a strong hope that at its next session the Committee of Experts would be able to observe real progress towards the full application of the Convention in law and in practice. It also hoped that in this case there would be no restrictions on the employers' right to free and voluntary collective bargaining and that, in general, employers and workers would be fully covered by the rights enshrined in the Convention. The Committee asked the Government to supply in its next report detailed and precise information, including the text of the new law on the Chamber of Commerce and Industry, to allow a comprehensive assessment of the situation and its evolution by the Committee of Experts.**

***Venezuela*** (ratification: 1982). The Government supplied the following written information.

On 29 May 2003, facilitated by the Organization of the American States, the United Nations Development Programme and the Carter Centre, there was signed the "Agreement between the representatives of the Government of the Bolivarian Republic of Venezuela and the political and social groups supporting it, and the Coordinadora Democrática and the political and civil society organizations supporting it". The signatories of the Agreement included the representatives of the Confederation of Workers of Venezuela (CTV) and the employers' organization, FEDECAMARAS. With this Agreement, the constitutional government and the political opposition are closing the period of political instability provoked by the aborted coup d'état of April 2002 and, at the same time, recognizing the existing constitutional order as a framework accepted by the majority for maintaining democracy in Venezuela.

On 9 May 2003, the parliamentary group of the ruling party in the National Assembly proceeded to submit a draft bill to reform the Organic Labour Act. The bill responds to the recommendations made by the supervisory bodies of the ILO as to the need to bring the national provisions into conformity with the obligations under ratified Conventions Nos. 87 and 98. As a result of the legislative process to discuss and adopt the draft reform of the Organic Labour Act, the Permanent Committee on Integrated Social Development of the National Assembly has definitely withdrew from its legislative agenda the draft bill on the trade union guarantees, following the observations made by the Committee of Experts on the Application of Conventions and Recommendations and the direct contacts mission.

> On 19 November 2002, the Gaceta Oficial No. 37.573 published the new Organic Labour Act respecting the Electoral Authority, section 33 of which stipulates the following:
>
> The National Electoral Council has the following competence:
>
> …
>
> 2. Organize the elections in the trade unions, while respecting their autonomy and independence, in compliance with the international treaties in this area concluded by the Bolivarian Republic of Venezuela, providing them with the corresponding technical and logistical support. Equally, the elections in occupational unions, and in the organizations with political aims; in the civil society; in the later case when it is so requested or ordered by the final decision of the Electoral Chamber of the Supreme Court of Justice.

This law limits and conditions any action of the National Electoral Council in terms of the independence and autonomy of the trade union organizations and the obligations assumed by the Republic under the international treaties and conventions on human rights, including Conventions Nos. 87 and 98. According to article 23 of the Constitution, these treaties and conventions shall be applied in a direct and preferential manner, subjecting any participation of the National Electoral Council to the voluntary and free expression of consent on the part of the trade unions. The similar approach is taken in the draft bill to reform the Organic Labour Act.

The entry into force of paragraph 2 of section 33 of the Organic Labour Act respecting the Electoral Authority repeals the eighth transitional provision of the Constitution of the Republic, as well as the special transitional rules for the renewal of trade union leadership, approved by the resolution No. 010418-113 of 18 April 2001 of the National Electoral Council. Henceforth, the Council will not be able to convene, monitor or supervise the elections and could only provide technical assistance on request from the trade union organizations themselves.

**The Government representative** recalled that the previous year he had been present in the Committee shortly after the *coup d'état* which had threatened the political and economic stability of his country. On that occasion, his Government had undertaken publicly together with the representatives of the national parliament to adopt a series of legislative and administrative measures which would adapt the national regulations to the obligations deriving from Convention No. 87 and the recommendations made by the direct contacts mission which had visited the country in May 2002. Over the past year, and despite the difficulties, it could be seen from the observations of the Committee of Experts and document D.9 that there was the will to change and an institutional desire to make progress.

He indicated that, with regard to the Organic Labour Act of 1990, as amended in 1997, which had been criticized on many occasions by the Committee of Experts, preliminary draft legislation had been developed which took up all the proposals made by the Committee of Experts and the direct contacts mission. In this respect, sections 408 and 409, which made an over-detailed enumeration of the functions and purposes of workers' organizations were being repealed; section 419 requiring an excessively high number of

employers to establish an employers' organization was being amended to reduce this number from ten to four employers; the number of workers required to establish independent trade unions, as set out in section 418, was being reduced from 100 to 40; and section 404 setting out the requirement for an excessively long period of residence in the country before foreign workers could become members of the executive bodies of a trade union was being amended to reduce this period from ten to five years. He added that the above draft text was included in the legislative agenda with a view to its adoption in first discussion. The draft legislation not only included the recommendations of the Committee of Experts, but also amended structural aspects affecting the exercise of freedom of association and collective bargaining. In this respect, the broad interpretation of the so-called "State security bodies", which allowed discriminatory practices against civilian personnel and civil protection employees, such as firefighters, who had been the subject of discrimination by local and regional authorities for almost ten years, was being amended. The exercise of freedom of association had been extended to public officials within the meaning adopted by the Act issuing the conditions of service of the public service, in derogation from the special regulations permitting the arbitrary intervention of the national authorities and removing them from the purview of trade union organizations. The draft text included measures of protection for workers against acts of anti-union discrimination and imposed severe penalties on those who violated these rights. It assured justice that was rapid, less rigid and more effective. The draft legislation also reinstated the system of compensation for unjustified dismissal, thereby protecting the workers discriminated against by the last reform of the Organic Labour Act of 1997. More precise regulations were included on mass redundancies, the reduction of working hours and the strengthening of labour administration. The latter was open to consultation with the social partners.

With regard to the concept of the "alternation of executive officers by means of universal, direct and secret suffrage" as envisaged in article 95 of the Constitution, which had been criticized by the Committee of Experts, the Government accepted the recommendation of envisaging the possibility that executive officers of trade unions could be re-elected and indicated that the term "alternation" did not refer to the prohibition of re-election, which in his view did not exist, but to the regular holding of elections by organizations.

In the context of the discussion of the draft reform of the Organic Labour Act, the Permanent Committee for Integral Social Development of the National Assembly had struck the Bill on trade union safeguards off the legislative agenda. This measure would incorporate all recommendations made by the Committee of Experts and the direct contacts mission. With regard to the system of trade union elections envisaged in article 293 and the eighth transitional provision of the Constitution, he indicated that on 19 November 2002 the very recent Organic Act on the Electoral Authority had been published, section 33 of which provided that the National Electoral Council was competent for the organization of elections of trade unions while respecting their autonomy and independence in accordance with international treaties through the provision of technical assistance. This provision limited the competence of the National Electoral Council and made its participation subject to the free and prior consent of trade union organizations. The Organic Act on the Electoral Authority repealed the eighth transitional provision of the Constitution and reduced the competence of the National Electoral Council so that it could no longer participate in the convening, organization, supervision or inspection of elections and its participation would only be possible at the prior request of trade union organizations. The Organic Act also repealed the Special Statute for the Renovation of Trade Union Leadership. He added that on 11 July 2002, the Act issuing the conditions of service of the public service had entered into force. The Act made the legal status of trade unions of public employees equal with other workers' organizations in the country by repealing the Regulations respecting trade unions of public employees of 1971. This had enabled the Latin American Confederation of Workers to withdraw the complaint submitted to the Committee on Freedom of Association on this issue.

With regard to resolution 01-00-012 of the Office of the Comptroller of the Republic, requiring trade union officials to make a sworn statement of assets at the beginning and end of their mandate, an obligation also set out in the statutes of certain trade union organizations, he indicated that the Ministry of Labour had accepted the criterion of the Committee of Experts and the direct contacts mission through an instruction issued to all employees in this respect. The Office of the Prosecutor of the Republic had issued a new resolution in March 2003 which, in the view of the Ministry of Labour, also failed to comply with international obligations, although it recognized that the sworn statement of assets would be made freely and would not be obligatory.

Finally, he observed that the Government shared the observations of the Committee of Experts regarding the need to respect public freedoms in order to be able to exercise trade union rights. He indicated that on 29 May 2003, as a result of the intervention of the Organization of American States (OAS), the United Nations Development Programme (UNDP) and the Carter Centre, an agreement had been signed between the representatives of the Government of the Bolivarian Republic and the political and social groups supporting it, and the democratic coordination and the political organizations and organizations of civil society supporting it. The representatives of the political opposition included members of one of the five workers' confederations of the country, the Confederation of Workers of Venezuela (CTV), and the most representative organization of employers, FEDECAMARAS. The agreement implied an undertaking to resolve differences by democratic means in accordance with the Constitution, the full observance of human rights and the submission of the authorities and citizens to the rule of law and to institutions. Through this agreement, both the constitutional Government and the opposition were seeking to bring to an end a phase of political instability and were recognizing the Constitution as being accepted by the majority as enshrining democratic coexistence in the country. The agreement called upon the National Assembly to adopt the Act establishing the Truth Commission, which would investigate the events that had occurred between 11 and 15 April 2002 when human rights had been violated. Without prejudice to the above, the judicial system had taken penal action against those who had made unwarranted use of arms on that occasion, including police and military officials directly and presumably involved in the *coup d'état* of April 2002. The Government emphasized that on that occasion, despite the difficulties experienced, it had not resorted, as was traditionally done, to declaring a state of emergency or to suspending constitutional guarantees. With regard to social dialogue, he indicated that the agreement demonstrated the efforts and initiatives made by the Government. Following April 2002, the Government had set up tripartite round tables in the automobile, chemical, pharmaceutical, textile, transport, cooperative and small and medium-sized enterprises sectors. This had been a one-year experience in which the ILO's principles had been fundamental. Recently, difficulties had been encountered in the dialogue with employers' and workers' organizations. Nevertheless, he considered that the agreement that had been concluded would make it possible to resolve this situation. In conclusion, his country was encountering difficulties arising out of its will to change a society of poverty and exclusion into an inclusive and participatory society in which human rights were broadly enjoyed. In this framework, the ILO's cooperation and technical assistance from headquarters and the Multidisciplinary Advisory Team in Lima were essential for the training of public officials and the social partners.

**The Employer members** recalled that the case of Venezuela had been before the Committee since 1995 and that for the past three years the Committee's conclusions on this case had been placed in a special paragraph of its report for continued non-compliance with the provisions of the Convention. It was well known that the country had been going through a difficult political situation for some years. However, it was the role of the Committee to concentrate on issues relating to labour law and the fulfilment of the obligations of the Convention, even if the Government representative had dedicated much of his statement to his country's political problems. The Employer members recalled that the direct contacts mission which had visited the country after some delay in May 2002 had confirmed that the situation gave grounds for serious concern. In its observation, the Committee of Experts had referred to the findings of the mission that repeated acts of violence continued to be perpetrated against trade union leaders and members, especially by paramilitary groups, and that there were hardly any consultations with the social partners on important matters relating to labour law. In this respect, the Employer members reaffirmed that respect for basic civil rights was a prerequisite for the effective exercise of freedom of association. In their view, the Government should take a proactive approach in this respect and adopt measures to punish persons who committed such crimes.

With reference to the amendments to the national legislation announced by the Government representative, they noted that there was no indication of whether the amendments had actually been made to resolve the problems cited by the Committee of Experts, particularly relating to the excessively high number of workers and employers required to establish representative organizations and the restrictions on the number of years during which the leaders of such organizations could remain in office. Although the Government representative had referred to the information contained in document D.9, the Employer members recalled that this information was of a political nature and contained no details on

the changes made to the labour law. There remained numerous problems with regard to compliance with the Convention, some of which were embedded in the provisions of the Constitution, which meant that it was very difficult to change the labour legislation without the relevant constitutional amendments. The Government representative had intimated that some of these problems arose out of the interpretation of the relevant provisions, but the question therefore arose as to where the final responsibility lay for interpreting the law in this report.

With regard to the comments made by the Committee of Experts concerning article 293 and the eighth transitional provision of the Constitution, which provided that the National Electoral Council was responsible for organizing the elections of occupational organizations, the Employer members emphasized that this left no freedom for employers' and workers' organizations with regard to the election of their leaders. The Government representative had announced draft legislation to amend this provision. Such announcements had been heard on previous occasions, but the direct contacts mission had indicated that the National Electoral Council continued to intervene in trade union affairs. In this respect, they reaffirmed that interference in the electoral procedures of employers' or workers' organizations was a very serious violation of the Convention. The same applied to any requirement for a statement of assets by the leaders of such organizations at the beginning and end of their mandate. All of the above led to the conclusion that nothing had changed in practice, despite the repeated promises made. The Employer members therefore urged the Government to agree to receive a further direct contacts mission. If the measures announced by the Government had been planned in good faith, such a mission should cause no problems for the Government. Indeed, a Government which had expressed worthy intentions for the past eight years should consider a direct contacts mission as being a moderate and useful means of cooperation.

Expressing their serious concern at the situation in Venezuela, the Employer members stated that even though they would like to think that the situation was improving, and that there had been no persecutions of workers or employers, the fact could not be overlooked that serious violations of Convention No. 87 continued. The detention of leaders of employers' and workers' organizations for their activities was contrary to the principles of freedom of association. Indeed, the exercise of the activities of employers' and workers' organizations had to be free from pressure, persecution and acts intended to discredit them. The Employer members considered that the case under examination did not relate exclusively to political questions, but also to the freedom of association of employers and workers as envisaged in Convention No. 87, and that they constituted a fundamental human right. There could be no valid action or attitude if the fundamental human rights were not respected in the first place. There was painful evidence that violations were being perpetrated. However, they indicated that they did not want to confront the Government.

They added that, while on the one hand, the Government was indicating that it had recourse to the assistance of international organizations, on the other hand, it was not possible to affirm that the results of the direct contacts mission in 2002 had had a positive impact with regard to the establishment of social dialogue. If there was no respect for the social partners, there could be no dialogue. The Employer members were aware of the importance of tripartism and wanted everyone to participate. The events that gave rise to complaints demonstrated that the situation was serious. They emphasized that they were sufficient so that on other occasions the employers would have sought the adoption of more serious measures, such as a Commission of Inquiry. Nevertheless, under the present circumstances, they wished to reconstitute a situation of dialogue and tripartism.

They wondered how it was possible to achieve freedom if there were detentions and an absence of freedom of expression, or if the law restricted these freedoms. They recalled that national constitutions were sovereign, but did not prevail over fundamental human rights. The Employer members supported all institutions which protected human rights, and agreed that there was no place for enterprise if these rights were not respected. The Employer members were prepared to be convinced that the good intentions of the Government could be harmonized with the interests of the social partners. They considered that the harm caused to employers' and workers' organizations had been very serious, but was still not irreparable. They considered that the situation justified the sending of a mission at the highest level, and they called for such a mission. They did not wish to have to consider the serious situation in Venezuela in the Governing Body or the Conference again, or to have to talk about negative results. They were in favour of social dialogue, and not against the Government of Venezuela.

**The Worker members** welcomed the information presented by the Government representative. They expressed their hope that the points which were not contained in document D.9 would be transmitted in writing. Last year, the application of Convention No. 87 in Venezuela had led to the adoption of a special paragraph. Meanwhile, the Committee on Freedom of Association had examined a number of cases relating to this situation, especially at its session held last March.

The report of the Committee of Experts mentioned that the direct contacts mission held in May 2002 pointed to the violent acts committed by paramilitary groups, with some complicity on behalf of the public authorities. These acts of violence included the death threats launched against trade unionists and the assassination of a trade union leader. The same mission denounced the lack of any significant consultations of the social partners. However, the speaker pointed out that a Bill on the reform of the Organic Labour Law in response to the requests of the Committee of Experts had been formulated. Having said that, a few contradictions persisted between the national Constitution and Convention No. 87: the mandate of trade union leaders was not renewable; the election of its members was subject to direct and universal suffrage; and the National Electoral Council intervened in trade union matters. They noted that some progress had been made. Resolution No. 010-00-012 obliging trade union leaders to declare their patrimony might be annulled. Several bills which were criticized had been withdrawn. Positive developments were made with respect to four cases mentioned by the Committee on Freedom of Association. However, the continued acts of the paramilitary groups against trade union leaders seriously compromised the application of Convention No. 87. A climate of violence and acts of discrimination launched against trade unions could only jeopardize freedom of association. On the basis of the above, the Worker members recommended the dispatch of a direct contacts mission to Venezuela to: (a) check the current status of the declared legislative reforms; and (b) to enable the free expression of employers' and workers' organizations in their relations with the Government. The Worker members further expressed their hope that the current situation of discrimination and acts of violence would be subject to impartial investigation.

**The Worker member of Venezuela** indicated that Venezuela was undergoing a process of change brought about at the grassroots. This has led to the creation of a wide, democratic and participatory movement. He endorsed the recommendations made by the Committee of Experts on the reform of the Organic Labour Act and informed the Committee of their current participation in a technical team within the Social Development Committee of the National Assembly. He pointed out that private sector employers were violating the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Employment Policy Convention, 1964 (No. 122), by imposing on workers their redeployment through massive dismissals, reduction and retention of wages and other economic benefits and working conditions, in addition to the deferral of discussions on collective agreements. The speaker reiterated the importance of the autonomy and independence of workers' organizations vis-à-vis political parties, successive governments and employers' organizations. He said that, at a time when trade union membership was increasing, it was not appropriate to use the ILO, as a political forum to raise issues which should be resolved at the national level.

**The Government representative of the United States** underlined the conclusions and recommendations of the ILO supervisory bodies in this case on the critical importance of social dialogue and the right of workers' and employers' organizations to conduct their activities without government interference and in a climate of complete security. She expressed that respect for civil liberties, promotion of genuine social dialogue and the unfettered functioning of workers' and employers' organizations were not only essential to the exercise of freedom of association, they were essential for the creation of a productive and prosperous society. The speaker urged the Government of Venezuela to continue to work with the ILO to bring its law in line with its obligations under Convention No. 87 and to promote dialogue with all representative organizations of workers and employers.

**The Government member of Sweden, also speaking on behalf of the Governments of Denmark, Finland, Iceland and Norway,** noted with concern that this case had been examined on several occasions by the Conference Committee. While taking due note of the information given by the Government representative, the speaker deplored that the situation for trade unions and their officials still seemed to be precarious and that the Government had not held adequate consultations with social partners. The Government was urged to take necessary steps to ensure that workers' and employers' organizations could exercise their rights in full security, as well as a continuous dialogue with social partners.

**The Employer member of Venezuela** indicated that a few declarations did not reflect the present situation relating to the events of April 2002. He informed the Committee that the current Minister of Justice had confirmed that he had received the resignation of the President, so a *coup d'état* had never taken place. The improvements which were announced by the Government served only its own interests and the recent agreement, while it was signed by both the employers and civil society, excluded international observers. He highlighted the continued violations of Convention No. 87. The trade union movement had been attacked by the setting up of parallel movements. He stressed the importance of joint action by free and democratic workers' and employers' organizations in order to put an end to the current situation in Venezuela. The stoppage that had lasted two months in his country occurred as a result of the will of civil society and was called off in the hope that the Government would take a more flexible position. The speaker concluded by expressing the need for an end to the control exercised on workers' organizations, and for the restoration of democracy in Venezuela.

**The Worker member of the United States** reiterated his organization's commitment to and support of democratic institutions, the rule of law, and non-violence in Venezuela. He condemned the reprehensible *coup d'état* of April 2002 and stated that the AFL-CIO president expressed in October 2002 in a letter to President Chavez the firm conviction that all civic and collective actions in Venezuela must be peaceful and not against democratic institutions. He recalled the indications in the special paragraph in the 2002 Conference Committee report on progress as regards Article 2 of the Convention. The new section 33(2) of the Organic Law on the Electoral Authority significantly reduced the supervisory powers of the National Electoral Council in union elections and eliminated mandatory term limits for union leaders. Moreover, the agreement of May 2003 between representatives of the Government and of the opposition gave support for pluralist democracy. Despite these few positive steps, many setbacks had occurred. Article 293 of the Venezuelan Constitution maintained the Governments' interference in trade union elections, and furthermore the CTV's National Executive had not been legally recognized by the Venezuelan authorities despite the fact that this was part of the conclusions of 2002 ILO direct contacts mission and the Conference Committee's special paragraph last year.

With regard to the events in the petroleum sector, the speaker stated that although each State had a legitimate interest to maintain essential services, to protect national security, and to avoid violence and the destruction of property, it was against the principles of Convention No. 87 to retaliate against strikers for purely political or anti-union motives. Over 18,000 employees of all professions had not been allowed to return to work with negative effects on the productivity and technical capacity of the Venezuelan oil industry. The explanation given by the Government was contradictory, claiming at the same time that employees had voluntarily abandoned their work and that they had received disciplinary discharges for alleged sabotage. Moreover, employees on legitimate leave, including pregnancy leave and vacation, had been discharged. Recalling the assurances given that the employees would be readmitted, the speaker requested clarification on the progress made in this respect. He urged the Government to reconsider its refusal to readmit the strikers. The Government should foster an environment of reconciliation, justice and constructive negotiation. The unjustified detention order against the CTV president should be removed and the Government should take up its responsibility to investigate the assassination of CTV trade unionist Ricardo Herrera. The Worker member supported the request of the Worker members to dispatch a direct contacts mission to Venezuela.

**The Worker member of Mexico** recalled that, in December 1999, a new Constitution was approved in Venezuela by means of a popular referendum. This Constitution includes a number of infringements on freedom of association, a requirement for the alteration of union leaders and interference in the internal affairs of trade unions, namely its electoral procedures. He denounced the Government for conducting a policy of libel against the CTV and for refusing, in 2002, to accredit them to the ILO Conference despite the fact that the Supreme Court of Venezuela recognized the CTV as being the most representative workers' organization. The Government of Venezuela had repeatedly ignored the numerous requests of the ILO for it to cease its attacks on the CTV and to respect its autonomy and union rights. The speaker joined other members in requesting a direct contacts mission to Venezuela.

**The Worker member of France** noted the positive elements recorded following the previous year's discussion and the direct contacts mission of May 2002. The Government representative had acknowledged the competence of the ILO supervisory mechanism and had stated that the observations and recommendations of the Conference Committee and the Committee of Experts were seriously taken into consideration. He had admitted that problems existed with respect to the application of Convention No. 87. The 2002 direct contacts mission had not met with all of the trade union confederations and organizations and had made no comment on the aborted *coup d'état* which had taken place a month earlier. An attempt to overthrow a democratically elected president by force or through an insurrectionary strike was not included among the activities that were protected by Convention No. 87. The Government had expressed its will to enter into a dialogue with the organized socio-economic actors and to consult them on the possible amendments of the Organic Labour Act in order to bring it into conformity with Convention No. 87 and had described its efforts in order to take into account the recommendations of the direct contacts mission, of the Committee of Experts, of the Conference Committee and the Committee on Freedom of Association. There was a hope that this constructive attitude would lead very soon to the adoption of an amendment by the Parliament and that this could be verified as of the coming year. The report of the Committee of Experts also raised other non-settled issues, especially the fact that certain articles of the Constitution regulated and controlled in excessive detail the questions which belonged in fact to the competence of the unions: free choice of officials; freedom to organize without excessive constraints. This situation also prevailed in other countries in the region and evolved only too slowly. The rather wide interpretation of these provisions made orally by the Government representative should be introduced in the legislative texts and implemented in practice. The legislative framework should favour democracy and freedom of association.

The openness demonstrated by the Government should be encouraged. The observations made the previous year had been taken seriously but concrete results were expected from the following year. It would be a good sign if the Government accepted a high-level mission or a reinforcement of its cooperation with the ILO. The ILO representatives should contact all the organized socio-economic actors of the country. The consolidation of a process of social dialogue in good faith with all the interested parties would be in the interests of the Government, the organizations of employers and workers and, finally, in the interest of the country and democracy.

**The Government representative of Cuba** said that the information provided by the Government representative of Venezuela had pointed out in detail the initiatives of the Government of Venezuela to establish social dialogue within the framework of the law. The Government representative had provided detailed information on efforts to reform the Organic Labour Act, according to the observations made for several years by the Committee of Experts, although those observations had not been dealt with from the beginning. The speaker expressed concern for the scepticism some members of the Committee expressed with regard to governments, which led to the discussion of issues that were beyond the mandate of the Committee. She recalled that governments play an important role in the tripartite system and are part of the Organization under the ILO Constitution. Governments had a role to play in the supervisory mechanisms and such attitudes could affect the credibility of the Committee's work and could be counterproductive with regard to the cooperation desired from governments. The Committee should thank the Government of Venezuela for its explanations and transmit this case to the Committee of Experts to be evaluated objectively and impartially.

**An observer representing the International Confederation of Free Trade Unions (ICFTU)**, the secretary-general of the CTV, emphasized that the CTV was the most representative workers' organization in the country. He believed that the recommendations by the supervisory bodies of the ILO had not been taken up by the Government and he indicated that violations of Convention No. 87 had worsened. He referred to the following violations: (1) state interference in the electoral process of trade unions; (2) refusal to recognize the CTV as being a social partner; (3) the assassination of union leaders; (4) massive dismissal of union leaders without justification; (5) persecution of the president of the CTV who was presently in exile. He joined in with other statements in favour of another direct contacts mission.

**The Government member of France** considered that there was a need to follow up to the requests made by the Committee of Experts with respect to legislation or practice. He noted the progress that might be achieved by the ongoing reforms of the labour law but nevertheless wished to draw the attention of the Conference Committee to the need to remain vigilant while supporting the Government's efforts. He underlined that the political climate was more favourable today than last year. The Government had received a first ILO direct contacts mission which appeared to have had a positive impact. The agreements reached on 23 May 2003 between the Government and the coordinated democratic opposition move-

ment had raised perspectives of political and social conciliation and had been reinforced by the new provisions adopted by the Government in the area of labour legislation and further cooperation with the ILO. The speaker was in favour of such technical cooperation, and of the sending of a new direct contacts mission in order to provide technical support for the ongoing reforms.

**The Government representative** expressed his gratitude for the interventions, indicating that most recognized the efforts by the Government to comply with the recommendations of the Committee of Experts and the direct contacts mission and to pursue labour legislation, taking into account the commitments made in the field of human rights. He indicated also that the Government was aware of the importance of the work of the ILO and its supervisory organs. He thought it was premature to undertake another direct contacts mission immediately, considering the progress made since the last mission in May 2002. He maintained that, for progress to be achieved in matters of legislation, technical assistance was needed to facilitate the process of reform of the Organic Labour Act. He requested that the Committee provide assistance to the social partners and civil servants to enable them to work together to improve social dialogue, freedom of association, labour inspection and labour administration. Employment programmes should be promoted for small and medium-sized enterprises. He emphasized the importance of the tripartite nature of technical assistance since overcoming poverty demanded the collaboration of all social partners. The appropriate forum for a comprehensive and open discussion of the draft Bill to reform the Organic Labour Act was the National Assembly.

The speaker announced that a copy of the draft Bill had been sent to the Director-General of the ILO and that it was already on the legislative agenda for approval. The Parliament would be a way of proving and evaluating the will of the Government to comply with its obligations to the ILO. He emphasized the contributions of the direct contacts mission of 2002 in prompting the process of legislative reform after ten years, and pointed out that draft legislation of 2000 in violation of Convention No. 87 had been withdrawn. He indicated that the direct contacts missions facilitated the drafting of the Organic Electoral Authority Act, which used international human rights Conventions as its unavoidable and mandatory model, led to the repealing of the special statute on alteration of union leadership and catalysed the process to abrogate the eighth provision of the Constitution.

The Government representative said that alleging the lack of progress since the previous year would be denying the achievements made by the direct contacts mission and the public and private institutions, which had contributed to the advancing human rights matters on the legislative agenda. There had been a great institutional coordination effort. The Government was willing to enter into an extensive and sincere dialogue which, albeit complex, was a goal of democracy. The speaker referred again to the 29 May 2003 agreement between the Government and democratic opposition sectors in the country, which involved the OAS, UNDP and several countries, among others. He pointed out that the Government, in accepting the recommendations of the supervisory bodies of the ILO, had acknowledged the importance of organizations such as the CTV and FEDECAMARAS, both of which were parties to the agreement and were represented in the delegation at the Conference. The Government representative said that there was no denial of the role of other social actors in the country as it went through profound changes in the last five years. No one had a monopoly over the economy or politics. The responsibility of the Government was to unite all the stakeholders in a diverse society. He protested that certain issues had been raised, which were not within the mandate of the Committee, and that these would be addressed in time with the appropriate authorities. Recalling that sometimes freedom was used abusively, for example when it held up basic public services, he pointed out that there were no political prisoners or union leaders detained in his country. Admitting that persons associated with trade union activities had been assassinated, he stressed that the Government was the first to condemn such acts and stated that, with respect to the particular case evoked, a suspect had already been detained. Members of the police and the military, who had participated in the events of April 2002 were being indicted for violation of human rights and would be examined by a Truth Commission of independent experts in human rights under the agreement mentioned above.

**The Worker members** noted at the outset that it was not common for an Employer member to take the floor also on behalf of workers, even in a tripartite system, which was recognized by the international community. They were of the view that the ongoing Committee could not decide on the political events which recently shook the country.

The conclusions formulated by the Conference Committee last year included a special paragraph due to the acts of violence launched against trade unionists, the absence of consultation of workers' organizations and the intervention of the public authorities in trade union matters. Meanwhile, the Committee of Experts and the Committee on Freedom of Association had observed positive developments with respect to Convention No. 87. On the basis of the above statement, the Worker members expressed their conviction that the social dialogue between the Government, employers and workers was the best means to promote decent and worthy jobs, and would help in overcoming a situation of crisis and economic recession as witnessed in Venezuela. They recommended the sending of a direct contacts mission to Venezuela: (a) to check the current situation of the declared reforms; (b) to enable the expression of workers' organizations in their relations with the Government; and (c) to define the prospects of technical cooperation based on the promotion of social dialogue.

**The Employer members** stated that the discussion on this was similar to previous years, with the Government stating that in fact all problems had been solved or evoking misunderstandings. The Employer members, however, noted that so far only drafts of new legislation existed and that the situation basically remained unchanged. The speaker observed that the Government representative had referred generally to technical assistance by the ILO, but did not comment on the recommendation to receive another direct contacts mission. At the same time the Government representative had praised the achievements of the last such mission, which was not logical, particularly given the fact that the recommendations of that mission had not yet been fully implemented. In conclusion, the Employer members insisted that new legislation in accordance with Convention No. 87 had to be adopted. Stressing that resort could also be made to other measures, such as the constitutional complaints procedures, the Employer members urged the Government representative to indicate whether a new direct contacts mission would be accepted.

**The Government representative** stressed that the situation in the country had changed since the previous year and acknowledged the achievements of the direct contacts mission, which had given rise to inevitable legislative reforms, which the Government agreed were necessary. The Government representative indicated that it had no objection to receiving another direct contacts mission in the future, but that it considered it to be more important for the ILO to provide tripartite technical assistance in the problem areas mentioned, involving all social partners in the continued legislative process, thus making it possible to evaluate the progress made.

**The Committee noted the written statements of the Government, the oral statement of the Government representative and the discussion which followed. The Committee recalled that the Committee of Experts had referred to the serious deficiencies in the application of the Convention concerning both workers' and employers' organizations, regarding the right of employers' and workers' organizations to organize in a manner of their choosing, the right of organizations to freely elect their representatives and to establish their statutes, and the failure of the Government to consult the main social partners.**

**The Committee also noted the results of the direct contacts mission of May 2002. The Committee observed that the Committee on Freedom of Association had examined a large number of infringements on trade union rights. The Committee recalled that respect for civil liberties was fundamental for the exercise of trade union rights. The Committee requested the Government to take the necessary measures to ensure that workers' and employers' organizations could exercise their rights in a climate of complete security.**

**The Committee noted the statements of the Government representative concerning draft legislation submitted to the National Assembly with a view to bring the law into full compliance with the Convention. The Committee emphasized that this process be carried out in full consultation with the most representative workers' and employers' organizations and that their opinions be duly taken into account. The Committee, in a spirit of continued cooperation, urged the Government to accept a new direct contacts mission in order to assess the situation *in situ* and to cooperate with the Government and all of the social partners in view of ensuring full application of the Convention.**

**The Committee, in the event that the Government was not in a position to receive this mission, would be obliged to adopt other measures at its next session.**

**Convention No. 95: Protection of Wages, 1949**

***Ukraine*** (ratification: 1961). **A Government representative** (Minister of Labour and Social Policy) considered the discussion of the case as an opportunity to jointly decide on further steps towards solving the problem of wage arrears in Ukraine. The Government considered it to be an important issue and was well aware of its re-

sponsibility in settling wage arrears. Discussion of the case at the 2001 Conference had been followed by significant improvements in the situation regarding payment of wages and settlement of wage arrears. Particulars on the measures taken by the Government for the implementation of Convention No. 95 had been submitted by the end of 2002, as required under article 22 of the ILO Constitution. In April 2003, the Ministry of Labour and Social Policy, together with the social partners, had carefully studied the latest comments of the Committee of Experts.

Following the debate on the case of Ukraine at the 2001 Conference, total wage arrears had been reduced by 48.1 per cent, from 4.6 billion grivnas in 2001 to 2364 billion grivnas in 2002. Furthermore, the number of workers affected by wage arrears had decreased from 5.4 million in 2001 (41.8 per cent) to 2.1 million in 2003 (17.9 per cent), a decrease of 3.3 million persons. Half of these workers (48.5 per cent) suffered delays in payment of wages of three months or less, which was also unacceptable.

The most significant changes had taken place in the public sector, where wage arrears had been reduced by two-thirds to 1.5 per cent (35.8 million grivnas). Wage arrears had also been reduced in agriculture (by 71.3 per cent) and coal mining (by 6.6 per cent). Reduction of wage arrears had been reported in most economic and industrial sectors, as well as in all administrative-territorial units. All this was the result of improvements in the economy and effective actions by the executive branch in solving social problems.

Wage arrears were being monitored on a monthly basis by the Minister of Labour and Social Policy of Ukraine, and the relevant information brought to the attention of the Cabinet of Ministers and the Administration of the President of Ukraine. They were being settled in an economic context of increasing minimum monthly wages and average salaries.

The legislation aimed at protecting workers' wages had been strengthened. In 2001 the draft amendment on the criminal code and the code of Ukraine on administrative offences had been adopted in consultation with trade unions, establishing the criminal and administrative liability of officials for untimely and partial payment of wages. In January 2001 the "Act respecting compensation to citizens for loss of part of their profits due to the non-observance of time of their payment" had entered into effect. In October 2002 the Labour Code, concerning the strengthening of penalties and fines for company executives guilty of delay in the payment of wages, was amended. In May 2001 the President of Ukraine issued the "Urgent measures for acceleration of settlement of wage arrears" Decree. The strengthening of state monitoring, primarily through labour inspections, had also contributed to the reduction of wage arrears. Transformation of the labour inspection system had allowed the introduction, to the Supreme Council of Ukraine, of draft laws on the ratification of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

In 2002 on the initiative of state labour inspectors, 1,044 company executives, guilty of wage arrears, were taken to court, which led to the termination of their contracts in 278 cases. Central and local authorities took 940 company executives to court resulting in the termination of 208 contracts. Since the beginning of 2003, 457 company executives were prosecuted and 69 of their contracts terminated. In the first four months of 2003, state labour inspectors took 6,799 company executives to court for violating wage payment legislation; (88.4 per cent of defaulting enterprises inspected) this was up from 19,629 prosecuted in 2002 (77.8 per cent of defaulting enterprises inspected), and 48.9 per cent in 2001. More than twice the number of criminal proceedings were initiated against company executives in the first quarter of 2003 compared to 2002 (i.e. 485 in 2003 compared to 206 in 2002).

The Government prepared a number of draft laws aimed at facilitating settlement of wage arrears by giving them top priority over other payments, and considering them as privileged payments in the event of liquidation of an enterprise. The creation of guarantee institutions in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), was also being considered.

Taking into account that the adopted measures were not sufficient, in April 2003, the Supreme Council of Ukraine approved the action plan of the Cabinet of Ministers of Ukraine, which has made the settlement of wage arrears a major priority. Referring to the observation by the Committee of Experts on wage arrears in the Voltex company, he indicated that, by decision of the Commercial Court of Volynsk Oblast 4 January 2003, bankruptcy proceedings had been initiated against the enterprise. Wage arrears of 2.2 million grivnas were included in the list of claims against the enterprise. The Voltex Committee of creditors carried out financial restructuring according to the recovery plan, which was approved by the court on 24 April 2003 aimed at settling wage arrears, in accordance with the Act respecting the renewed solvency of the debtor or confirmation of bankruptcy.

Ukraine requested ILO technical assistance for drafting legislation to give priority to the payment of wages over other mandatory payments and for studying other countries' success in creating a guarantee fund for payment of wages in the event of bankruptcy. He indicated that two draft laws would be submitted to the Committee in the near future. Finally, he emphasized that the new Government of Ukraine, together with trade unions and employers, had decided that all draft laws and standards concerning wages and observance of social standards would be adopted only after they had been debated by the National Council of Social Partnership, where all decisions would be taken on the basis of consensus. He was convinced that continued dialogue with the social partners would help solve the problems of implementation of the ILO Conventions ratified by Ukraine.

**The Employer members** noted that it was hardly surprising that in the present case workers' as well as employers' organizations had supplied comments to the Committee of Experts. Wage arrears were only partially a problem in law or practice, as the basic principle of receiving remuneration for work done existed in every legal system. The Employer members noted that by formally fixing time limits for the payment of wage arrears, the Government had in fact officially endorsed and authorized the delays in the payment of wages. They noted that some progress had been made in an individual enterprise mentioned by the Committee of Experts, but that nevertheless the 2002 observation gave a mixed picture of the situation. The situation remained particularly difficult in the public sector, which was highly dependent on the state budget. It was hoped that the Government would strengthen labour inspection and other relevant institutions, but the Employer members believed that further administrative and legislative action would have a limited effect since the root causes of the problem were related to the economic system. The existing situation might be due to the tax and business laws in force, but also to the current state structure, which lacked a culture based on the market economy and private property. As long as the country would not tackle this fundamental issue the current situation would be prolonged.

**The Worker members** recalled at the outset that the case raised before the Committee for the last nine years concerned the failure of the Government to comply with its obligation of ensuring the regular payment of wages. Taking into account the General Survey on the protection of wages, which was undertaken this year, they believed it was appropriate to focus on the issue by way of example. With regard to Article 4 of the Convention on the restriction of payment of wages in kind, they noted the adoption of a new law which restricted such a form of payment to 50 per cent of the remuneration due to a worker. That percentage was, in their view, a large proportion of the remuneration due to a salaried worker. They noted, however, that the partial payment of wages in kind should be calculated on the basis of prices, which were not less than the cost price. With respect to Article 11 of the Convention which constituted one of the pillars of social protection because it established the priority of wage claims in the case of an employer's insolvency, the Worker members regretted to note that the principle continued to be ignored in Ukraine. He referred to Article 12 of the Convention, which provided for the payment of wages at regular intervals, which was another fundamental pillar of social protection, because it gave the worker the security necessary for his or her daily life. The Worker members further underlined that the continued situation of wage arrears, as witnessed in Ukraine, violated grossly the spirit and letter of Convention No. 95. The Worker members indicated that, during the previous years, the observations made by the Committee of Experts on Convention No. 95 had mentioned the problem of arrears. The Governing Body of the ILO had received nine representations based on article 24 of the ILO Constitution, claiming the non-compliance of Convention No. 95. He added that, in the countries under discussion, the phenomenon was mixed with massive violations of the right to work, aggravated by the cynical attitude and lack of responsibility on the part of some employers.

The Worker members took note of the information presented by the Government in which wage arrears would have diminished by 46 per cent in the last two years and that the number of workers affected reached 58 per cent. He noted that, despite of the above, the Committee of Experts had further signalled an aggravation of the phenomenon since April 2002 in certain industries and in two important regions. He highlighted that the Federation of Ukrainian Trade Unions had pointed out that a draft law establishing the priority of wage claims over other mandatory payments, and the draft law establishing the priority of wage claims in the case of insolvency, were blocked by a veto of the Head of State. He further highlighted that those elements did not reflect a constructive attitude. The Worker members requested that the Government be called upon to

put to effect without delay the recommendations made by the Committee of Experts, to adopt the appropriate legislative measures; to reinforce controls; to apply subsequent sanctions; and to formulate efficient measures in order to redress the prejudices experienced by workers.

**The Worker member of Ukraine** recalled that this was the fourth time the case of Ukraine was being taken up by the Committee. Previous discussions by the Committee had had a positive impact on the Government. In 2001, at the request of the trade unions to the President of Ukraine, the Presidential Decree concerning the settlement of wage arrears had been adopted. The same year wage arrears had been reduced by approximately 2.2 billion grivnas, or 44 per cent of the total wage arrears. In 2002, wage arrears in the public sector had been almost liquidated. He emphasized the positive role played by the general agreement between trade unions and the Government in resolving the problem of wage arrears. The social partners had undertaken various measures aimed at payment of wage arrears and improving the supervision of compliance with the wage payment legislation in enterprises. Nevertheless, the problem of wage arrears had not yet been fully resolved. In response to the declining growth rate of industrial and agricultural output in 2002, the settlement of wage arrears had been reduced accordingly. In 2002, wage arrears in the productive sector had been decreased by only 6.5 per cent. Since the beginning of 2002 overall wage arrears had even increased by 51 million grivnas, or 2.2 per cent of total wage arrears. Particularly troubling was the fact that the wage arrears accumulated in 2003 made up approximately 26 per cent of total wage arrears. Nearly 2.1 million workers, or 18 per cent of the total workforce, were affected by the wage arrears and more than one-third of workers suffered wage payment delays of over six months.

To protect the right of workers to timely payment of wages, the Federation of Trade Unions of Ukraine and its member organizations initiated a complaint, on behalf of workers, demanding the mandatory recovery of wage arrears from employers. In 2001, the courts had taken up approximately 225,000 individual complaints by workers and more than 155,000 in 2002. As a result, in 2001-02 the courts judged in favour of the payment of approximately 650 million grivnas, or US$123 million. Within the same period, 84 contracts with enterprises, which had violated labour laws, were terminated at the request of the trade unions. Trade unions were also using collective means for protecting the economic interests of workers. In 2002, 409 collective labour disputes had been registered, involving more than 2 million workers. In the process of conciliatory procedures employers had repaid approximately half of the arrears.

He indicated that the national legislation of Ukraine was not in compliance with Article 11 of the Convention, according to which, in the event of the bankruptcy or judicial liquidation of an undertaking, the workers employed therein should be treated as privileged creditors, and wages constituting a privileged debt should be paid in full before ordinary creditors could claim a share of the assets. For this reason, the chairperson of the Federation of Trade Unions of Ukraine had introduced to Parliament a draft amendment to the Act respecting the renewed solvency of the debtor or confirmation of bankruptcy. The speaker also referred to section 15 of the Act on labour wages, according to which payment of wages could be made only after payment of taxes and other mandatory payments. He indicated that in 2001-02 a law, which considered wages to be priority payments, had been discussed several times by the Parliament, but had been repeatedly vetoed under the pretext that it would reduce state income. However, no estimations of the alleged budgetary losses had been made.

He supported the position of the Ministry of Labour and Social Policy to consider enterprises, which did not pay wages to their workers, to be insolvent and suggested that the State Labour Inspectorate be authorized to initiate bankruptcy proceedings. He stated that resolution of the problem of wage arrears in Ukraine, in the opinion of the Federation of the Trade Unions, would also require the adoption, by the Supreme Rada of Ukraine, of a law on payments of wages prior to other payments; amendments in the Act respecting the renewed solvency of the debtor or compilational bankruptcy, in order to ensure that, in the event of bankruptcy or liquidation of an enterprise, wages would be paid prior to other payments; and ratification of Convention, No. 173. He hoped that the conclusions of the Committee would contribute to fully addressing the problem of wage arrears in Ukraine.

**The Employer member of Ukraine** expressed his gratitude to the ILO for its contributions to strengthening social dialogue in Ukraine. He supported the proposals made by the Government representative and the Worker member of Ukraine. He indicated that the settlement of wage arrears in the industrial sector had been slower than in the public sector. A number of enterprises had gone bankrupt, and it was necessary to find ways of solving the problem of wage arrears. He was concerned that the minimum monthly wage in Ukraine had not been negotiated with employers, and did not take local differences into account. He emphasized the importance of ILO technical assistance in drafting laws dealing with the protection of wages, fixing a minimum monthly wage, and creating a guarantee institution as provided in Convention No. 173. He emphasized that, in view of the unprecedented character of the economic transformations taking place in Ukraine, it was impossible to avoid wage arrears. He expressed his firm belief that within a year this problem would be successfully resolved. The economic growth of 6 to 7 per cent per year was a significant achievement by the Government and employers, and it would contribute to the resolution of the problem of wage arrears.

**The Worker member of Romania** stated that the phenomenon of wage arrears affected several countries in the region but it was most widely felt in Ukraine, because 20 per cent of its workers were affected. In certain branches of industry (extraction industries) and the services sector (health, social services and education), the phenomenon was on the increase since April 2002. It was particularly felt in the regions of Donetsk and Lougansk. The speaker pointed out that the liquidation of wage arrears by the close of 2001 had not been made, yet no sanctions had been imposed by the authorities in power. He further indicated that the payment of wages in the form of allowances in kind continued to be a current practice in Ukraine, contrary to Article 4(2) of Convention No. 95. According to Article 1 of Convention No. 95, wages were fixed by mutual agreement between the parties or by national laws or regulations, in such a manner that it was incumbent on the public authorities to ensure that workers received the wages to which they were entitled, on time. The speaker added that Ukrainian trade unions had requested the adoption of a law establishing the priority of payment of wages, and the formulation of a legislative instrument on the priority nature of wage claims in the case of insolvency of an enterprise. He concluded that they had further requested that the Government take without delay all the appropriate measures in this regard.

**The Government member of Cuba** referred to the progress mentioned by the Committee of Experts in their observation. Some speakers, however, had questioned the figures presented by the Government during the discussion, figures which, in the speaker's view, should be accepted. Moreover, it was not appropriate to make value judgements on the form of property or economic system chosen by Ukraine, which were issues outside the competence of the ILO. When, in a situation of economic slowdown in a market economy, such solutions as privatizations continued to be promoted as a solution to a country's problems, workers rights were neglected and issues were addressed that interfered with an objective assessment of the situation.

**The Worker member of India** noted that this was a clear case of a violation of the Convention, which had already been discussed in the Conference Committee three times since 1997. It was undisputed that wage arrears had increased in a number of sectors during the last year. Payment in kind was unacceptable and the fact that 30 per cent of the total workforce remained unpaid was a social problem of a critical dimension. Receiving payment for services rendered was a basic right of the worker. It was thus an obligation of the Government to pay the arrears and to deal with defaulting enterprises. Many social benefits were linked to the payment of wages and unpaid workers risked losing retirement benefits. The speaker urged to take a strong position in this case.

**The Worker member of Tunisia** declared that this case constituted a typical example of the non-observance of Convention No. 95, which was a Convention that touched upon a vital aspect of a worker's life because wages were, in general, his only means of subsistence. The case raised here posed a real problem which affected numerous sectors of the economy and several regions. He added that even the public sector, which was, by definition, directly attached to the State, was also affected. He indicated that this inertia by the public authorities encouraged the same practices to occur in the private sector, by giving a bad example. He indicated that the Government had taken a number of measures at the administrative and legislative level, which gave some results. Thus, in 2002, wage arrears would have diminished by 44 per cent in comparison to the previous year, and the number of workers affected reached 45 per cent. He added that the positive development was interrupted and that the phenomenon of wage arrears was on the rise whilst other indicators pointed to a revival in the economy. He added that such a contradiction could be explained by the fact that some enterprises, in their cynical attitude, preferred to invest their profits, instead of fulfilling their obligations vis-à-vis the workers and due to the preference of the State for the reduction of its debt. He added that, in reality, the practices of payment in kind, and the continued situation convinced workers even further that, behind its declarations of

goodwill, the Government did not have a firm commitment at that level.

**The Government representative** expressed his gratitude to the participants in the discussion. He indicated that he would inform the members of the Cabinet of Ministers and the President of the results of the debate on the case at the Conference. He emphasized that, in light of the results of the discussion, the Government would adopt measures aimed at solving the problem of wage arrears in Ukraine.

**The Employer members** stated that since the Government found technical cooperation useful, the Committee should recommend it. For instance, the Government could be assisted in drawing up new legislation in such areas as bankruptcy. However, the Government should also examine the current economic system as a whole with a view to identifying areas where improvements could be made.

**The Worker members** considered that, while there had been some progress, wage arrears were still a problem which continued to affect workers in many sectors. Their widespread and long-lasting nature made them serious violations of Convention No. 95. While noting the ongoing efforts of the Government, the Worker members requested that the Government show more determination in enforcing the Convention, by adopting the Act aimed at accelerating the payment of arrears and establishing priority payment of wages, and the Act guaranteeing the privileged payment of wages in the event of the bankruptcy, and by reinforcing labour inspection and the system for sanctioning infractions to labour legislation. They expected the Government to demonstrate its will through the establishment of precise deadlines, the exact planning of arrear settlements, and the recognition of the principle of privileged payment of wages. While praising the Government for requesting ILO technical assistance, they recommended that such assistance not be limited to wage arrears but that it cover wage legislation as a whole.

**The Committee noted the oral explanations given from the Government representative and the discussion that followed. It noted in particular, the information provided by the Government concerning the legislative measures aimed at reducing the wage arrears as well as the latest statistical data showing a clear improvement of the situation both in respect of outstanding wage debts and the amount of wages paid in kind. The Committee reiterated that the payment of wages in full and at regular intervals was a fundamental right of workers and an absolute prerequisite for healthy employment relations, economic progress and social welfare. It emphasized that the social partners should be fully involved in the national effort to comply with the Convention. The Committee encouraged the Government to deal with the persisting wage crisis. It also invited the Government to continue closely monitoring the evolution of the situation and to keep the Committee of Experts informed of any significant developments in this respect, including the adoption of the draft Act on the privileged payment of wages. Finally, the Committee welcomed the Government's and its social partners' request for technical assistance from the Office, especially in respect of the effective establishment of a wage guarantee fund in accordance with the international labour standards.**

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

***Guatemala*** (ratification: 1952). **A Government representative** (Minister of Labour and Social Protection) recalled that his mandate had begun on 27 January 2003 and would go until 14 January 2004, after elections. His statement should be considered in the context of previous debates of the Conference Committee and in particular of the direct contact missions of 2001: many of the recommendations that had been made at the time had been implemented and others were in the process of being implemented.

The Government representative began his intervention by recalling the profound structural crisis which Guatemala was going through. The economic model, based on the exploitation of agricultural products with very low added value, which had predominated since independence was coming to an end. The only asset Guatemala had to offer in order to compete in international markets, such as the coffee market, was the low cost of labour, in particular that of indigenous peoples. This model was not ethically, politically or economically viable and had led to a culture of political authoritarianism.

Since the independence of Guatemala, in 1821, the present Constitution – adopted 17 years ago – has been the longest one in force in the history of the country and it was the first time that a democratically elected president succeeded another democratically elected president and would also be succeeded by free and democratic elections. For the first time in 12 years, Guatemalans had been living in democratic conditions.

The speaker referred to the questions raised by the Committee of Experts in their observation of 2002. Concerning the information requested by the Committee of Experts on the procedure for collective bargaining in the public sector, regulated by Legislative Decree No. 35-96, the Government representative indicated that section 5 provides for two ways of proceeding in collective bargaining: through direct negotiation with the relevant authority, or, through the judiciary channel, with a representative appointed by the Attorney-General. In the speaker's view, the procedure had been in practice during the period covered by the observation, given that six collective agreements on working conditions in the public sector had been validated.

Regarding the lack of enforcement of final court decisions ordering the reinstatement at work of workers dismissed on grounds of trade unionism, the speaker indicated that Guatemala had three independent branches of power: legislative, executive and judicial. Interference between the three was prohibited and could be subject to criminal prosecution. At the request of the Committee of Experts to amend section 414 of the Penal Code in view of strengthening penalties for disobeying court orders, the speaker stated that the Minister of Labour was promoting the creation of a State Commission on Labour Relations and that the initiative for reform of the Penal Code was being examined by the Tripartite Commission of International Labour Affairs since 24 April 2003.

Regarding the request by the Committee of Experts to furnish the number and nature of penalties which the Ministry of Labour had imposed for non-enforcement of final court decisions for reinstatement, the speaker admitted that no penalties had been imposed as of yet.

Regarding the Committee of Experts' referral in their observation to comments by the Trade Union Confederation of Guatemala (UNSITRAGUA), the speaker stressed that all the necessary measures were being taken to update the reports due to the Committee of Experts and that the number of staff in the Ministry of Labour responsible for this had been increased for this purpose. Furthermore, the Ministry of Labour was very willing to apply the necessary measures whenever called on to do so by the judicial authority.

In its observation, the UNSITRAGUA had referred to the compilation of blacklists by a company of trade unionists and the dismissal of union leaders from the Ministry of Health and Welfare, two municipalities and one enterprise. In this respect, the speaker stated that, in February 2003, a copy of the denunciation concerning the compilation of blacklists had been sent to the Attorney-General of the Public Ministry. The speaker indicated that the general labour inspection had no record of the denunciation concerning the dismissal of union leaders and had asked for details from the persons involved. The dismissal of union leaders from enterprises was handled in court.

Furthermore, UNSITRAGUA had mentioned the failure to reinstate, as ordered by the Ministry of Labour, worker unionist-members who had been fired by a banana enterprise. In this respect, the speaker referred to the response given in 2002. The present administration had not acted on the collective suspension of workers' contracts ordered by the previous government. According to information the Ministry of Labour had obtained from the respective employers, the 37 persons mentioned by UNSITRAGUA in this regard apparently no longer worked for those enterprises. In the end, in accordance with the decision of the competent judge, the termination of the contract and wages payments to workers were authorized, and the workers were granted severance pay. In any case this was an issue that could have been addressed in court.

Another of the observations by UNSITRAGUA referred to infringement on the right to collective bargaining by Government Agreement No. 60-2002 of the Ministry of Finance. In this respect, the speaker said that the Court on Constitutionality, the highest judicial authority, judged – by a court decision of 3 January 2003 – in favour of the workers thus bringing to naught the challenged portion of the Government Agreement mentioned. The speaker stated that, in time, the Committee of Experts would receive a copy of the Government Agreement.

Regarding full implementation of Articles 4 and 6 of Convention No. 98, the Government representative referred to what had been done in 2002. As had been explained, the public sector had two possible means of negotiation. For example, in the case of the social security administration, the competent authorities had been obliged to negotiate, by means of a court resolution, which involved fixing wage increases to be applied. In the Roads Administration a procedure under way to authorize a strike would soon be concluded.

In its 2002 observation, the Committee of Experts had heard comments by the International Confederation of Free Trade Unions (ICFTU) on the anti-union behaviour in *maquilas* in the

free-trade export zones. In this respect, the speaker explained that an administrative procedure on the issue by general labour inspection had concluded with the imposition of penalties on the infractor enterprises, requesting that the Ministry of the Economy withdraw their tax exempt status, in accordance with the Export and *Maquila* Promotion and Development Act. The Ministry of the Economy had issued a press communiqué, published on 4 June 2003 in *Prensa Libre*, warning all enterprises of their obligation to abide by labour laws and informing them of the procedures initiated against some enterprises and of the penalties that would be imposed. The speaker added that he had no information on the entering into of new collective agreements in the *maquila* sector.

To end his intervention concerning the issues raised by the Committee of Experts in their observation of 2002, the speaker explained that the draft amendments to the Labour Code were pending approval in Congress.

The speaker also informed the Committee on other measures adopted by the Government in 2003. In the short term, it was expected that, in the course of 2003, the Commission on Labour Relations – composed of the Executive, the Supreme Court, the Labour Commission of the State Congress, the Public Ministry and the Office of the Attorney General – would pursue their efforts. The Commission on Labour Relations in particular would address the social aspects of the free-trade negotiations. In this respect they had proceeded to suggest the repealing of the tax exemptions from those export enterprises that did not respect labour rights.

The National Banana Commission, as in other countries of Central America and in Panama, should create a framework for resolving the numerous social problems in the sector. That Commission had proved to be a leader in the formulation of two collective agreements.

The Government representative explained that the Government elected in November 2003 should pursue the legislative reforms under way. Three substantive reforms would affect labour relations. Legislative Initiative No. 2855 would address issues of procedure by reducing the average length of a trial from 28 to six months. Labour trials should be made to increasingly incorporate oral procedures, as had been done in the latest reforms for criminal trials. Legislative initiative No. 2857 would address reform of the Labour Code in order to make it consistent with the international commitments made on such matters as child labour, domestic labour and sexual harassment. Legislative Initiative No. 2858 aimed at expanding the right to compensation and to renew the reinstatement of workers who had been unjustly dismissed. The speaker recalled that since 1954 workers had lost the right to automatic reinstatement.

The speaker referred to the restructuring of the Ministry of Labour. On the one hand, horizontal coverage would be expanded with 22 new offices to be opened at the department level. On the other hand, vertical coverage would be increased with special attention to child labour, domestic work, forced labour and women workers. Furthermore, staff posts in the Ministry of Labour would be reclassified, with a 35 per cent increase in posts held by workers and an increase in the number of labour inspectors in the countryside.

Among the measures to be taken in the medium and long terms, the speaker mentioned the creation of a "basic course on labour rights". This would be introduced as of 2005, as a compulsory course from the ninth to the twelfth grades and cover the fundamental rights at work. With the help of the *Relacentro* project (Freedom of association, collective bargaining and labour relations in Central America, Panama, Belize and the Dominican Republic), a university-level technical course in labour relations had been formulated for the training of labour inspectors. Furthermore, it was expected that, with the help of the *Prodiac* project (Tripartism and social dialogue in Central America – Strengthening of processes for democratic consolidation), tripartism would be expanded at the department level. The speaker also drew attention to the approval of the National Languages Act, under legislative Decree No. 19-2003 (published on 26 May 2003) which established the legal procedures to follow for labour inspectors who did not speak the Mayan languages, of which there were 23 in Guatemala.

In conclusion, the Government representative emphasized his commitment to send the ILO all the requested information. Guatemala welcomed the Office to continue its activities and expand them, from their headquarters in Geneva as well as from the regional offices, with services in different geographical areas in the field as well as with the activities currently under way.

**The Employer members** recalled that cases on Guatemala had been discussed in the Conference Committee for eight consecutive years, whereas the situation with regard to Convention No. 98 was before the Committee for the last time in the mid-1980s. The Committee of Experts had commented on Convention No. 98 several times in recent years, including in 2002, when it was able to note some developments with interest and even with satisfaction. This was also the case with regard to Convention No. 87 this year. The Employer members recalled that one of the points raised by the Committee of Experts was the question whether there was a consultation procedure that would enable the trade unions to express their views in the process of the preparation of the budget. The Government had stated that there was such a procedure, but the experts requested fuller information. The speaker noted that the Minister had provided now some indications in this regard, but that it was necessary to receive them in a more detailed and written form. The second point raised by the experts concerned the non-compliance with judicial orders to reinstate illegally dismissed workers. In this regard, the experts had asked the Government to make the existing penal sanctions for non-compliance more stringent. The Employer members took note of the Minister's statement that the Government, in principle, agreed with this view. In addition, the Minister stated that the competent national authorities were already authorized to take the necessary measures to ensure compliance and that tripartite consultations were under way to discuss the problem. In the Employer member's view this was the right approach. On a general note, the Employer members observed that it was not clear what constitutes "adequate protection" against anti-union discrimination under Article 2(1) of the Convention and that this would largely depend on the respective national legal systems. It was therefore doubtful whether the Committee of Experts could establish a one-size-fits-all approach. It was however important that consultations on this issue were being held and, naturally, that the objective of appropriate protection was being attained.

With regard to the issues raised by UNSITRAGUA, the Employer members stated that difficulties concerning the length of judicial proceedings existed throughout the world and that there were no specifications given in the report as regards the length of proceedings in the present case. They recalled the experts' request to the Government to examine alleged cases of anti-union discrimination and to take the necessary measures if they had in fact occurred. The speaker noted that the Minister had provided information replying to the questions asked by the Committee of Experts. However, as many questions remained open, the Government should provide a detailed written report in reply to the Committee of Expert's requests in order to allow for a proper assessment. In addition, the Employer members pointed out that the 2002 observation gave no information on the content of Governmental Agreement No. 60-2002 to which it made reference. They further noted the recent decision of the Supreme Court in favour of the workers, which was mentioned by the Minister. Regarding the comments of the National Federation of State Workers' Unions of Guatemala (FENASTEG) on the denial of collective bargaining for the public service, the Employer members stated that the budgetary procedures were not the same in every country and that the budget naturally would have to be amended if collective bargaining was successful. The comments submitted by ICFTU concerned similar issues as already taken up by the experts, inter alia, illegal dismissals, non-compliance with reinstatement orders, and anti-union conduct in export processing zones. The Employer members noted the Government representative's statement to the effect that negotiations with the employers were underway and requested that the Government give detailed written replies to the observations made. Referring to the indications given by the Government representative with regard to the reform of labour laws and institutions, the Employer members asked the Government to indicate a time schedule for the adoption of new texts and to send copies of the respective draft bills for examination by the Committee of Experts. The announced increase of staff in the Ministry of Labour and the promises to speed up the length of court proceedings were welcome, but the information given by the Government representative had been very general in nature. However, bearing in mind that the recovery from the civil war would certainly take time, it showed that the country was on the right way to reform. The Employer members encouraged the Government to provide a full and complete report to the Committee of Experts on the outstanding issues and hoped that further progress would be possible soon.

**The Worker members** welcomed the information provided by the Government representative, particularly on the measures taken at the institutional level. In their view, these indications were binding on the Government. Nevertheless, in the same way as the Employer members, they called for the information to be provided in writing.

As they had done the previous year, the Worker members deplored the fact that the country constantly appeared before the Committee, either with regard to Convention No. 98 or Convention No. 87. At the Committee's previous session, they had urged the Government to take urgent measures and to show a real will to pro-

tect trade union leaders and activities through the establishment of a climate of peace and security, by guaranteeing the operation of an impartial, rapid and effective judicial system and by strengthening social dialogue. In particular, they had emphasized the need to bring an end to the total impunity which reigned in respect of all anti-trade union acts in Guatemala.

As indicated in the report of the Committee of Experts, the Worker members denounced the absence of consultation procedures with the workers in relation to the formulation of the national budget. This situation, which resulted in a veritable denial of the right to collective bargaining of State employees, was aggravated still further by the provisions of Legislative Decree No. 60-2002. They also denounced the failure to reintegrate workers who had been dismissed for trade union reasons, a subject on which the Government had still not provided any tangible information. Finally, they denounced the slowness of the judicial system whenever it was called upon to examine violations against trade unionists, another issue on which the Government had not provided any tangible elements of information. In export processing zones it was still impossible to negotiate collective agreements, and there was no indication of any change in this situation. Finally, the complete impunity for acts of violence perpetrated against trade unionists led to the unfortunate conclusion that the situation was continuing to deteriorate.

The Worker members therefore called for a high-level mission, led by a well-known independent person. The many direct contacts missions which had visited the country up to now confirmed that there had been no positive developments. For this reason, over and above the simply justifications and promises heard from the Minister of Labour, a high-level mission appeared to be necessary today if it was wished to see the emergence of the right to collective bargaining and if the right of association was to be no longer systematically trampled underfoot in the country.

**The Worker member of the United States** recalled that Guatemala had been under review in the Conference Committee for most of the last decade for non-compliance with Convention No. 87, and this year for non-compliance with Convention No. 98. There had been conventional wisdom that with the labour law reforms of 2001 many of Guatemala's labour rights problems had gone away. However, in terms of both legal norms and practice, nothing could be further from the truth. The situation was of particular concern to the North American trade union movement, as a petition for review of Guatemala's compliance with core labour standards under the United States General System of Trade Preferences was pending before the United States Trade Representative and Guatemala was seeking inclusion in any future Central American Free Trade Agreement with the United States.

The Worker member stated that the Committee of Experts' report specifically mentioned the lack of effective remedies and reinstatement for victims of anti-union firing and discrimination. Nothing presented by the Government representative indicated that Guatemala had strengthened the provisions of section 414 of the Penal Code. But even assuming that this had been done, section 212 of the Labour Code maintained a loophole through which employers could easily revisit fines in another parallel judiciary process. The United States State Department, Human Rights Report of 2003 clearly stated that despite the Labour Code providing for reinstatement of illegally dismissed workers within 24 hours, employers would, in practice, file a series of appeals or simply defy reinstatement orders. The failure of the Government of Guatemala to guarantee a collective bargaining system that is faithful to Convention No. 98 was born out by the statistics. For example, there were zero collective bargaining agreements in Guatemala's export processing zone and *maquiladoras* employing well over 100,000 workers. Unchecked employment intimidation and restrictions on union representatives' access to this zone had prevented the negotiation of collective contracts in this sector, including where there had been union recognition and registration. In sum, several structural elements subverted collective bargaining in Guatemala: (1) an ineffective labour court, labour inspection and labour enforcement regime to ensure collective bargaining integrity, as stated in the 2001 report of the United Nations Verification Mission in Guatemala (MINUGUA); (2) employer-dominated "solidarista" organizations had the lock on 170,000 workers in 400 enterprises also precluding legitimate collective bargaining; (3) the Labour Code's requirement of 50 per cent plus one for the authorization in an entire industry in order to form a union with the right to negotiate a sector-wide agreement; and (4) as stated by the Experts, violence against trade unionists continued unabated. Over the last three years, MINUGUA had reported well over 158 death threats and at least six assassinations. Impunity remained a problem, as no progress had been made in prosecuting those criminally responsible for physical assaults committed against union activists. The speaker joined the Worker's spokesperson in urging the Conference Committee to recommend a high-level mission to Guatemala as soon as possible.

**The Worker member of France** stated that the case of Guatemala gave the impression of an absent State which underwent events without being capable of transforming them. She added that the setting up of export processing zones by the Government of Guatemala was indeed a public policy organized by the State in order to attract foreign investors. The State had modified its fiscal, customs and external trade policies, and had provided the necessary infrastructure to *maquiladoras* enterprises. How then could we accept that it does not impose the respect of Convention No. 98 which is reflected in part in national legislation? She pointed out that in such enterprises *maquiladoras*, there were workers who would have liked to organize and negotiate the terms of employment through collective agreements. Unfortunately, export free zones were zones free from freedom of association and the right to collective bargaining.

The Committee on Freedom of Association expressed its concern with regard to the aggressions and persecutions of trade unionists in the export processing zone of Villanueva. In a number of enterprises, salaried workers experienced pressure and propaganda because they were not members of a trade union whilst numerous trade union leaders and trade unionists received death threats, obliging them to resign. The Committee on Freedom of Association had specifically requested the Government to inquire into such acts of violence in order to bring to trial guilty persons. And even if the guilty persons were often known, nothing was made to bring them to trial. On the other hand, two trade union leaders of one of the above enterprises were interrogated by men who claimed to be members from the Public Attorney's office.

With respect to the press releases which had been issued by the Government, the speaker expressed her surprise that they were used as an instrument of public policy. She added that up to the present time the threats of lifting the fiscal privileges of *maquiladoras* enterprises had not changed the climate of violence. There was no record that the Government had signed any collective agreement in the export processing zones. And the Government should apply dissuasive penal sanctions if it had decided to exercise economic pressure on those companies which did not observe the right to work. As mentioned by the Committee of Experts in their report, "freedom of association could only be exercised in a climate that was free from violence, pressure or threats of any kind against the leaders and members of trade unions". She concluded by saying that the right to collective bargaining should apply everywhere on the territory of Guatemala including in export processing zones.

**The Worker member of Guatemala** referred to the difficulties encountered by public sector employees including municipal workers and workers employed in local authorities in exercising fully their right to collective bargaining. Collective agreements which were eventually signed were not observed especially with respect to wage increases. Municipal mayors ignored judicial decisions, and the State lacked the machinery to penalize lack of compliance of such decisions. The speaker urged the amendment of section 414 of the Penal Code, and the application of the requests formulated by the Committee of Experts with regard to Articles 4 and 6 of Convention No. 98. In Guatemala, an anti-trade union attitude continued to persist especially in the export products sector.

**The Worker member of Paraguay** denounced the gravity of the situation faced by the workers of Guatemala, who were denied their right to organize, particularly in the rural sector. In addition to violating Conventions Nos. 87 and 98, the rights of workers set out in the Protection of Wages Convention, 1949 (No. 95), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Forced Labour Convention, 1930 (No. 29), were also being denied, since workers who sought to organize did not receive the average wage, were assigned to the worst areas of the workplace and were obliged to perform overtime. He reiterated that all these measures were violations of the human rights of workers.

**The Worker member of Brazil** said that the signing of the Peace Agreement had given rise to hopes, but it was easy to see that the above Agreement had not yet reached the workplace. Trade unionists continued to be murdered, to disappear and to be kidnapped, as indicated by the reports of the Committee of Experts and the Committee on Freedom of Association. With regard to the application of Convention No. 98, it was a matter of institutional concern that the judicial system in Guatemala was not sufficiently agile and effective in its action to afford proper protection for trade union activities. As indicated by the observation of the Committee of Experts in 2002, trials were slow and not brought to a conclusion, and the fines were derisory for enterprises engaging in anti-union activities. Trade union leaders were frequently threatened, intimidated and imprisoned. The Committee on Freedom of Association had

warned that the frequent arrest of trade union leaders in such circumstances was a characteristic of an environment in which freedom of association was restricted. With regard to the murder of four trade union leaders in 1994, despite all the comments that had been made, it was still not known whether or not those responsible had been identified and punished. The Committee on Freedom of Association also indicated in paragraph 56 of its *Digest of decisions* that justice delayed was justice denied.

In addition to these structural problems, the annual reports of the Committee of Experts referred to new anti-union practices, such as the use of blacklists in certain enterprises, the dismissal of trade union leaders in the public sector, as had occurred in the Ministry of Public Health and Social Assistance, and of unionized workers in certain institutions. The list of anti-union activities was even longer in export processing zones and included physical violence and the dismissal of workers who endeavoured to establish trade unions and initiate collective bargaining. The ratification of Convention No. 98 obliged States to enter into collective bargaining in the public sector. Yet the observation in 2002 indicated that Decree No. 85-96, on the pretext of budgetary considerations, prohibited collective bargaining in the public sector. The national authorities had to change their attitude and guarantee consultation with trade union organizations.

**The Worker member of Colombia** regretted that the Committee had to deal once again with the issue of freedom of association in Guatemala, as the Government and a few employers' organizations continued to violate Conventions Nos. 87 and 98 and other ILO standards as indicated in the report of the Committee of Experts. He indicated that the situation of workers and trade unions in Guatemala had worsened in spite of the declarations made by the Government on the measures taken to bring into conformity national legislation with ILO Conventions and Recommendations. He pointed out that one grew accustomed to the declarations of successive governments that they were deploying huge efforts to safeguard the rights of workers, before the Conference Committee. However, he underlined that if any of the successive governments had fulfilled their promises, workers' conditions in Guatemala would have changed by now.

The speaker recognized the importance of the declarations made by the Government representative and expressed his wish that the Conference Committee verify that the Government had complied with the obligations made in their intervention, at its forthcoming session. To conclude, the speaker supported the proposal of the appointment of a high-level mission.

**The observer representing the Word Confederation of Labour** said that laws existed in Guatemala respecting the right of association and collective bargaining, even though they contained gaps and weaknesses. The fundamental problem was the total lack of political will and public and private decisions to respect, comply with and ensure observance of trade union rights. State entities and private employers implemented their policies and strategies in disregard and violation of the rights set forth in Conventions Nos. 87 and 98. He supported the appointment of a high-level mission

**The Employer member of Guatemala** expressed concern at the working methods of the Conference Committee as a result of which Guatemala had been included once more on the list of individual cases. He recalled that the application of Convention No. 87 had been discussed the previous year and that efforts had been made this year to include in the list the case of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). On certain occasions a desire had been expressed to mention Guatemala in a special paragraph of the report of the Conference Committee, despite the fact that the Committee of Experts had included Guatemala among the cases of progress. Questions could be raised on the obscure motives for selecting cases from Latin American countries, and in particular Central American countries, in the Conference Committee. In his view, such actions provided grounds for questioning the credibility of the Organization's supervisory mechanisms.

With reference to the technical aspects indicated by the Employer members, he stated that the tripartite consultations on conflict resolution and legislative proposals had not produced results. The authoritarian approach of the authorities could provide an explanation to this, as the Government representative had intimated. He hoped that social dialogue would be renewed as it was the best way to mend the social fabric in Guatemala. The Government should try to prevent any confrontation between the social partners instead of fostering it.

**A Worker member of Norway**, **speaking on behalf of the Norwegian trade unions and workers in other Nordic countries**, regretted that the Conference Committee again had to discuss serious violations of the rights of the Guatemalan workers. Last year the Government had promised to improve the situation through the enforcement of new labour legislation, but violations of the right to collective bargaining had continued and the situation had become even worse. The Nordic unions fully supported the critical comments from the Committee of Experts on the need to amend the Labour Code and its requests for more information on why there was such slow progress in securing the right to collective agreements for workers in the public and private sectors. According to the speaker, the enforcement of Guatemalan labour laws was characterized by impunity. Illegal firing of workers for union activities, blacklisting, death threats and even murder went unpunished. Where the courts deemed cases of violations of labour rights illegal, judgments were rarely enforced.

With regard to the situation of the banana workers union SITRABI, the speaker recalled the events of 1998 when union leaders were kidnapped, forced to resign and to publicly call for the end of a strike. Once again, workers attempting to engage in collective bargaining had been fired and had received death threats. The administration of the plantation concerned refused to send union dues to the union for over a year and had falsely accused union members of criminal activity. Finally, the owner of the plantation refused to promote respect for labour rights by stating that the plantation was an independent legal body. A similar situation had occurred in the Pepsi Cola enterprise Embotelladora la Mariposa, where a number of workers had been fired for union activities, while others where intimidated. Although the court issued a reinstatement order on 20 January 2003, the workers concerned had not been rehired and experience showed that this was unlikely to happen. The fact that the Government had not deemed it necessary to reply to the comments by ICFTU and UNSITRAGUA was another indication in that direction. Referring to the situation in the maquila industry, the Worker member recalled that it was virtually impossible to form a union and to negotiate collectively in that sector. Workers planning to form a union would be fired immediately and where unions had been formed, factories were closed and reopened under another name. The speaker concluded by stating that the serious nature of the large number of violations of Convention No. 98 and the fact that these had occurred for many years should lead the Conference Committee to take the most serious steps to ensure the right to collective bargaining. A first step was to send a high-level mission to Guatemala in the very near future.

**The Government representative** referred to his preliminary statement in which he had provided information on many of the questions raised during the discussion. The application of the procedure established by Section 5 of Decree No. 35-96 might give rise to difficulties. The limitations on wage increases through collective bargaining in the public sector derived from the commitments adopted to the International Monetary Fund, which did not authorize wage increases in the public sector without new tax revenues. In any case, it should be noted that six collective agreements had been concluded in the public sector, and one was being negotiated with the employees of the Labour Ministry.

The legislative reforms should be approved in the course of the current year since the Government wished to conclude commercial agreements and continue to benefit from the tariff privileges accorded by the legislation of the United States. He emphasized that among other measures, his Ministry had promoted in Congress the reintroduction of the right to reinstatement of workers who were dismissed without due cause. The Ministry of Labour ensured the implementation of matters which fell within its competence.

As to the problems in the maquilas, the Special Public Prosecutor – created following the direct contacts mission of 2001 – was investigating crimes against trade unionists. The Government had been trying to sanction the export processing enterprises which had not complied with labour legislation by issuing fines, the suspension of fiscal privileges and even the closure of enterprises. The Congress of the Republic should adopt the Labour Code reforms which had been submitted for its approval by the Government.

Of the two 250,000 Guatemalans who had died during the civil war, 14,000 were trade unionists. The report of the Commission on the Clarification of History drawn up in the framework of the peace process with the assistance of the United Nations gave a full and exact account of the particularly tragic and difficult circumstances from which Guatemala had suffered. It was necessary for the whole of Guatemalan society to overcome the violence and eliminate impunity: the judicial system was also a reflection of what had happened during the civil war, as many judges and labour lawyers had also died during that tragic period.

Since 2000, the Government of Guatemala had extended an open invitation to United Nations organizations, without reservations with regard to international supervision. Nevertheless, certain recommendations which had emanated from the direct contacts mission of 2001 were still being implemented, and that elections would be conducted in 2003. The moment was not appropriate to carry out new missions.

He reiterated his commitment to introduce structural and institutional reforms (such as the reclassification of posts in the Ministry of Labour and the reinforcement of labour inspection) since, in order to resolve the problems, it was not sufficient to adopt new laws, but they also had to be implemented in full.

**The Worker members** stressed that the information presented orally by the Government be transmitted in writing to the Committee of Experts at a later stage. They took note of the economic context of the country but reiterated that the present state of the economy could not be invoked as a legitimate excuse for deferring the application of ratified Conventions. The Worker members were of the view that the information presented orally besides the importance of their completion by written information, did not meet their concerns and criticisms which were however explicit. In reply to a question from an Employer member of Guatemala, the Worker members reiterated that the case of Guatemala was yet again inscribed on the agenda because of the persistent serious situation encountered by workers and not for any obscure motivation. The Worker members requested the dispatch of a high-level mission to Guatemala in order to reflect the concerns of the international community before the national authorities on the one hand. On the other, the high-level mission would direct the authorities of Guatemala into taking the concrete measures to put a stop to the gross violations of freedom of association, which had been denounced for such a long time.

**The Employer members** noted that the Government representative, in his reply, had provided some information according to which there was an intention to ensure maximum length of court proceedings of six months. He also had stated that the reform of the Labour Code was in itself not sufficient, but that the effects of the civil war would also require institutional reform. Nevertheless, it was still necessary that the Government provide a detailed and precise report on all these issues. Recalling that as a result of the 2001 direct contact mission, the Committee of Experts was able in 2002 and 2003 to note certain positive developments with satisfaction, the Employer members noted that the Government representative had expressed no objection with regard to another such mission. Under these circumstances, one should pursue what the Government was ready to accept. A direct contact mission should be sent to the country for consultations on the spot.

**The Committee noted the oral statement by the Minister and the discussion that followed. It also noted that the comments of the Committee of Experts referred to the absence of adequate protection against acts of anti-union discrimination in both law and practice, as well as to obstacles to collective bargaining in the public and private sectors (including in export processing zones). The Committee also noted that various trade union organizations had submitted comments on the application of the Convention which also included allegations of acts of violence against trade unionists and the dismissal of trade union members. The Committee noted that the Government representative had referred to certain legislative and administrative initiatives to improve the application of the Convention. The Committee called upon the Government to accept, at a more appropriate time, a direct contacts mission led by a well-known independent person. The Committee requested the Government to send, in time for the next session of the Committee of Experts, a detailed report containing precise information on the matters raised by the Committee of Experts, exhaustive replies to the comments submitted by the workers' organizations and information on the State Industrial Relations Commission announced by the Minister and on its first results. The Committee urged the Government, in consultation with the social partners, to take the necessary measures in law and practice without delay to guarantee the full application of the Convention. The Committee hoped that practical progress would be seen in the very near future.**

***Pakistan*** (ratification: 1952). **A Government representative** (Secretary Ministry of Labour, Manpower and Overseas Pakistanis) stated that Pakistan, which was going through a massive economic and political restructuring process, had always attached great importance to the observations of the Committee of Experts. Pakistan had consistently attempted to identify necessary, sustainable and viable solutions in a national tripartite setting. No system could be perfect, but it was the will and the steps undertaken which should be the measure of the implementation of Pakistan's obligations. The Government representative drew attention to the adoption of a new labour policy in September 2002. The most important objective of the policy was to bring labour laws and administration in conformity with national objectives and international standards as enunciated in the ILO Conventions ratified by Pakistan, including Convention No. 98. The new policy attempted to strike a balance between the interests of labour and the industrialists and to reduce the role of the Government to that of a facilitator. Core pillars of the policy included the fostering of a relationship of trust between workers and employers, the evolvement of bilateral codes of conduct at the enterprise level, promoting healthy trade unionism and restructuring the labour judicial system.

The Government representative stated that the Committee of Experts had pointed out that section 2-A of the 1973 Service Tribunal Act excluded certain categories of workers from enjoying the rights enshrined in the Convention. In this respect, he informed the Committee that in light of the tripartite agreement on the new labour policy the issues related to this provision were being addressed, and that a proposal had been made by the Ministry to delete or amend it in order to enable public sector workers to seek remedy under labour legislation. This was not any easy process, but first steps had been taken. The Government was committed to finding a solution reflective of the demands of all stakeholders and the Committee's concerns.

With regard to the denial of collective bargaining in the public banking and financial sector (sections 38-A to 38-I of the 1969 Industrial Relations Ordinance) and the exclusion of certain public servants of grade 16 and above from the purview of the Convention, the Government representative stated the following: (1) section 27-B did permit peaceful union activities and did not violate Article 3 of Convention No. 87; (2) different views were held in Pakistan on the issue, e.g. the State Bank of Pakistan considered that section 27-B was vital for checking disruptive activities of trade unions in the interest of financial reforms; (3) the new labour policy proposed a review of section 27-B with the aim of finding a mutually acceptable solution and a comprehensive follow-up on the policy, and this review had commenced, which included this aspect; and (4) the new labour policy had been scheduled for debate in both houses of Parliament.

Referring to the situation of workers in export processing zones, the Government representative stated that this question was under the jurisdiction of the Ministry of Industries, which had exempted the zone from the application of labour laws. However, the Ministry of Labour had taken up the matter with the Ministry of Industries with a view to withdrawing the exemption. An extensive dialogue was under way triggered by the Committee of Expert's observation and it was hoped that the Government could report positively on the issue next year.

With regard to section 25-A of the Industrial Relations Ordinance, 1969, the Government representative informed the Committee that a new Industrial Relations Ordinance had been promulgated on 26 October 2002. Under its provisions, workers who had been dismissed, discharged, removed from employment or transferred or injured during an industrial dispute were now entitled to interim relief from the National Industrial Relations Commission. In addition, the Government representative stated a review of section 27-B of the Banking Companies Ordinance, 1962, was under way. He concluded by renewing Pakistan's commitment to constructive dialogue and criticism. The country had taken tangible steps to further improve the situation at the domestic level and would continue to do so.

**The Worker members** welcomed the information provided to the Committee by the Government, on the application of Convention No. 98 in Pakistan. The last time this case had been examined was in 1992. The Worker members, however, regretted that, since then, the Government had not given enough priority to this Convention. The report of the Committee of Experts emphasized once again the discrepancies which had been pointed out 11 years ago. The new Ordinance of 2002 on labour relations still contained a number of restrictions to workers' right to organize. Public authorities continued to interfere in the internal affairs of trade unions. Union leaders still risked serious penalties if accused of unfair labour practices. Workers were still poorly protected against discriminatory anti-union acts, and mechanisms for collective bargaining remained deficient. The rights established under Convention No. 98 were still not respected for major categories of workers, including the banking sector, level 16 or above civil servants, forestry, railroads, hospitals and the postal sector. The announced revision of the law governing the banking sector was impatiently anticipated. Employees of the banking sector and civil servants employed outside of the state administration should not be excluded from the guarantees provided under the Convention.

Regarding export processing zones, the Worker members regretted that the Government persisted in its failure to respect the rights of workers in these zones under Articles 1, 2 and 4 of the Convention. Regarding the protection of workers against dismissal linked to union activity, the Worker members deplored the fact that the new Ordinance of 2002 continued to restrict their right to appeal under such circumstances. The Committee on Freedom of Association itself had requested that the possibility of appealing be allowed under any circumstances and not only within the context of

a labour conflict. Furthermore, the Worker members demanded the abrogation of prison sentences for the abuse of banking facilities for union purposes during working hours. These examples, among others, illustrated the gravity, persistence and institutional nature of the infringements to Convention No. 98, which the Worker members denounced.

**The Employer members** took note of the indications by the Government representative that a new labour policy had been adopted in 2002. They stated that this in itself did not yet satisfy the recommendations made by the Committee of Experts in relation to the labour legislation. The Government apparently was taking steps to improve freedom of association in the public sector and the civil service, but the outcome of these efforts remained open. With regard to the situation in the export processing zones, the Employer members noted that no new information had been provided, as the measures taken so far did not go beyond draft laws. With regard to section 27-B of the Banking Companies Ordinance, 1962, under which the use of bank facilities or carrying out of union activities during office hours could be punished by fines and imprisonment, the Employer members stated that the sanction of imprisonment appeared too harsh. The Government had made many commitments and it was hoped that real progress could be noted very soon.

**The Worker member of Pakistan** associated himself with the statement made by the Worker members in relation to the international obligations of the Government of Pakistan. He recalled that the Government had held a National Tripartite Conference which recommended unanimously that national legislation be brought into conformity with ILO core standards as was also promised in the labour policy which was declared in September 2002 by the Government. The Industrial Relations Ordinance of 2002 which was introduced by the previous Government ran counter to these recommendations of the Tripartite Conference, the principles of the labour policy declared by the Government of Pakistan in September 2002, as well as the principles of Convention Nos. 87 and 98 ratified by Pakistan. The Committee on Freedom of Association in Case No. 2229 and approved by the Governing Body in March 2003, recommended that the Government amend its legislation to ensure that workers of a certain number of named enterprises enjoyed the right to establish and join organizations of their own choosing, to allow workers to seek legal remedies against acts of anti-union discrimination at any time and not only during an industrial dispute, and to repeal section 65(5) of the Industrial Relation Ordinance which disqualified a trade union officer from holding a trade union office for committing an unfair labour practice, contrary to the right of workers to elect their representatives freely. It also requested the Government to provide information on whether there was an additional waiting period relative to strike notice before initiating a strike action, and if so, to indicate the duration. The Committee on Freedom of Association also requested the Government to engage in full consultations with the social partners for possible amendment of the Industrial Relation Ordinance to resolve the issue of the labour judiciary system to the satisfaction of all parties concerned. He recalled that the observation of the Committee of Experts had requested amendments to several Acts such as the Civil Servants Act, the Tribunal Act, the Essential Services Act, and the Banking Companies Ordinance, as well as the Export Processing Zones Authority Ordinance, to ensure the rights under the Convention. He wanted the Government to be strongly urged to comply with the recommendations of the Committee of Experts and the Committee on Freedom of Association to amend its legislation, engage in social dialogue and move the Bill before Parliament in order to bring the law and practice in Pakistan into conformity with the Convention.

**The Worker member of Japan** wished to raise two points in the case of Pakistan. First, since Pakistan ratified Convention No. 87, 52 years ago, there had been serious violations of the ILO principles, in particular of freedom of association. No public sector workers had ever enjoyed full trade union rights for over half a century. The speaker recalled the statements made by the Government delegate of Pakistan in the plenary session of the Conference and by the Government representative of Pakistan in this Committee regarding their commitment to bring the labour laws and the labour administration of Pakistan into conformity with the national objectives and the ILO Conventions ratified by Pakistan. However, he noted that in reality the Government of Pakistan had increased the restrictions on collective bargaining rights in various sectors by the adoption of the Industrial Relations Ordinance, 2002, and by applying a broader interpretation of so called "essential services" than that of the ILO supervisory bodies. In addition, the new laws on public sector workers imposed further restrictions on these workers by preventing them from appealing to the courts against unfair dismissal and by prohibiting any court intervention in such matters. If the new labour law was to be in conformity with ILO Conventions, all workers should be given full trade union rights.

A second point raised by the worker member of Japan concerned the so-called "union policy" which prevented workers in export processing zones (EPZs) from forming and joining trade unions of their own choice, to bargain collectively and to take industrial action. The primary purpose of this policy, which was not limited to Pakistan but was to be found elsewhere in the world as well, was to encourage foreign direct investment in EPZs. However, it neither respected basic trade union rights, nor was it compatible with sustainable development. He strongly urged the Government to comply, without any exceptions, with international labour standards in all areas.

**The Government member of Cuba** stated that Convention No. 98 had become more relevant by the day because of prevailing neo-liberal policies and the established growth in the number of multinational enterprises. She indicated that there were many countries that failed to apply this Convention but, for rather unclear reasons, had not yet been brought before this Committee. She concluded by supporting the statements made by the Government of Pakistan.

**Another Government representative** took careful note of the comments raised by the Worker and the Employer members. With respect to the comments of the Committee of Experts on the EPZs he pointed out that there was only one and not a multitude of EPZs in Pakistan. However, this was not to justify the constraints that might be imposed on the workers. He added that his delegation attached great importance to its international obligations and had not been shying away from them. In response to the comments made by the Worker member of Pakistan concerning the Government's obligation to bring the amended legislation before Parliament, he stated that the Government would continue to bring this issue to Parliament as much as possible. His delegation remained committed to a constructive dialogue and would continue to address the observations made.

**The Worker members** hoped that, as had been indicated by the Government representative, the points raised by the Committee of Experts would be examined and that the relevant texts would be transmitted so as to enable the Committee of Experts to evaluate the progress made. The Government should take effective measures as soon as possible with a view to bringing the legislation in conformity with the Convention. In this regard, the Government should be reminded of the possibility of technical assistance from the Office. The Worker members pointed out that it was not relevant to revert to the issue of the designation of the cases on the list in the middle of a discussion of one of the cases. The list had been adopted, the criteria were known, and these would never be mathematical criteria. Moreover, a review of the list of the last years would lead to the conclusion that they were very balanced.

**The Employer members** recalled that this case had been the subject of numerous discussions and observations and that the shortcomings in the national legislation were evident. They pointed out that discussions alone would not lead to any progress without a substantial effort on the part of the Government to overcome this situation. They urged the Government to fulfil its promises to bring national legislation into line with the Convention.

**The Committee noted the statement made by the Government representative and the ensuing discussion. The Committee observed that for many years the Committee of Experts has been referring to a certain number of major discrepancies between law and practice on the one hand, and the provisions of the Convention on the other, in particular the limitations on the rights guaranteed by the Conventions for many categories of workers, especially those in the country's EPZs and in the public sector, as well as the lack of sufficient protection in law against anti-trade union dismissals. The Committee took due note of the statement by the Government to the effect that measures were being considered to modify some provisions of the legislation in question, especially with respect to the banking sector. However, the Committee noted with concern that according to the report of the Committee on Freedom of Association in March 2003, the newly adopted legislation seemed unlikely to solve the difficulties. The Committee believed that the Committee of Experts had to examine the legislation with a view to assess whether it is in conformity with the Convention.**

**Consequently, the Committee urged the Government to take whatever measures are required to modify all the legislation in the near future, in full consultation with the workers' and employer's organizations, with a view to guaranteeing in full the rights contained in the Convention for all workers covered by its scope.**

**The Committee expressed the firm hope that it will be in a position to note specific progress in this case and requested the Government to provide detailed information in its next report on the issues concerned, including information on all the proposals and changes in the relevant legislation, so that the Committee of Experts could examine the conformity of this legislation with the Convention.**

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

As the Zimbabwe Government is appearing for the second time before the Committee on the Application of Standards in relation to Convention No. 98, it is critical to point out at the outset that the concerns relate to legislative issues which have since been addressed through the passage of the Labour Relations Amendment Bill on 19 December 2002.

The Committee will recall that at the last session on 12 June 2002 Zimbabwe did indicate that the issues were being taken care of by legislative process. The same point was included in the report submitted in terms of article 22 of the ILO Constitution on Convention No. 98, in July 2002.

As soon as the Labour Relations Amendment Bill was passed by Parliament, copies were duly served to the ILO via ILO/SAMAT and ILO/SWISS Project on Social Dialogue and Dispute Settlement in Southern Africa on 15 January 2003, even before the official promulgation of the Bill on 7 March 2003. This demonstrates the Government's commitment to undertakings made at the previous session of the Conference Committee in relation to submission of legislative changes to the ILO once adopted. Therefore it cannot be an issue that Zimbabwe did not submit its Bill before the Committee of Experts sat, since the amendments were still being considered by the competent authority and the ILO was kept informed at all material times.

**1. Protection of workers' organizations against acts of interference of employers' organizations and vice versa**

As one of the outputs of the labour law reform, labour regulations to cover acts of interference were promulgated as Statutory Instrument 131/2003 – in line with Article 2 of Convention No. 98.

**2. Compulsory arbitration in the context of collective bargaining agreement imposed by the authorities at their own initiative**

With the coming of the Labour Relations Amendment Act 17/2002, sections 98, 99 and 100 were all repealed and sections 106 and 107 were amended. Under section 106 "show cause" orders could be applied now only to unprocedural collective job action, and, under section 107 disposal orders could be issued by the Labour Court instead of the Labour Officer. The Labour Relations Amendment Act introduced a new dispute settlement mechanism which had not been envisaged at the June 2002 Conference.

The new mechanism categorically distinguishes between disputes of right and disputes of interest. With respect to disputes of right one cannot go on collective job action but to adjudication as it is merely a question of enforcing existing rights. As regards disputes of interest, parties have the right to resort to collective job action. However, parties in an essential service cannot resort to collective job action, but are referred to compulsory arbitration. Generally, parties are referred to compulsory arbitration whether it is a dispute of right or a dispute of interest with their consent. Moreover, the new section 82 under Act 17/2002 states that: "If a registered collective bargaining agreement provides procedure for the conciliation and arbitration of any category of dispute, that procedure is the exclusive procedure for the determination of disputes within that category." This gives effect to Article 4 of the Convention.

**3. Other limitations to the right to collective bargaining**

*(a) Ministerial powers to fix maximum wages.* Whereas under section 22, which has not been repealed or amended by Act 17/2002, the Minister may make regulations specifying maximum wages, there is provision under section 22(2) for application for exemption from the application of a maximum wage notice. The power to fix maximum wages is therefore not absolute. The request to repeal this section may not be appropriate given the level of our economic development. Some agreements can cause distortions in the economy.

*(b) Approval of collective bargaining agreements.* Sections 25(2), 79 and 81 of the Act remain intact. The duty of the Minister under these sections will be solely to ensure compliance with national laws.

Our position is that it is in the national interest to protect consumers and the general public given the level of our economic development.

Section 25(1), in the view of the Committee, dilutes the functions of trade unions vis-à-vis collective bargaining. This was addressed by the amendment of section 23 which now links workers' committees to trade unions.

*(c) Prison staff – the Public Service Act and collective bargaining.* In accordance with section 2A(3) the Labour Act now has supremacy over any other enactment which is inconsistent with it. To the extent that the Public Service Act, especially section 14, is inconsistent with the Labour Act in excluding certain categories of state employees from its ambit, the Labour Act prevails. The Public Service Act and the Labour Act agree that the prison service be excluded from being employees of the State, being a disciplined force. The prison service is therefore appropriately excluded.

With regards to the rest of the services of employees mentioned in section 14, those who are employees of the State and have not been designated by the President in terms of section 3(2)(b) of the Labour Act, continue to be governed by the Labour Act and they can now rightly organize. So those in the state lotteries and other instances cited under section 14(c) or (h) are now governed by the Labour Act unless they are found to be involved in the administration of the State. So, prima facie, such employees have been endowed with the right to organize as embodied in law and in Convention No. 98.

*(d)* With respect to the question concerning teachers, nurses and other civil servants not directly engaged in the administration of the State, it should be confirmed that they negotiate collective bargaining agreements. In accordance with new labour legislation, they can form employment councils in terms of section 56 or section 57 of the Labour Act. The duties of employment councils, as outlined in section 62 of the Act, are to conclude agreements in the industry, as well as to resolve disputes between the unions and the employer (Public Service Commission). As from year 2000, several such agreements were concluded relating to the State Pensions Act and the cost-of-living adjustment, which covered 167,890 civil servants.

**4. Conclusion**

Zimbabwe submits that its listing in respect of Convention No. 98 was uncalled for and unnecessary given the Labour Law reform processes which commenced immediately after the 90th Session of the ILC (June 2002). Such processes involved all social partners in Zimbabwe and some of the structures of the Office. This is known by Workers and Employers from Zimbabwe.

**A Government representative** (Minister of Public Service, Labour, and Social Welfare) contended that the legislative issues leading up to his country's second appearance before the Committee had been adequately addressed by the Labour Relations Amendment Act (No. 17), 2002, a copy of which had been sent to the Office in January 2003, after the session of the Committee of Experts. He added that the Act was an output of the labour law reform process commenced in 1993. He also indicated that a number of draft texts leading up to the Bill had been sent to the Committee of Experts for examination with a view to receiving guidance, but not to make a case against his country. It had been for this reason that his Government had declined the direct contacts mission proposed the previous year, since the concerns raised were about to be addressed by the ongoing labour law reform process. Moreover, and in addition to the involvement of organized labour and business, this process was receiving technical assistance from the ILO/Swiss project on social dialogue and dispute settlement in southern Africa.

With regard to the protection of workers' organizations against acts of interference by employers' organizations, and vice versa, he noted that special regulations had been adopted which were in conformity with Article 2 of the Convention. A copy of these regulations had been submitted to the Office. In relation to the concern expressed by the Committee of Experts regarding compulsory arbitration in the context of collective bargaining, he said that this had been addressed by the new dispute settlement mechanism that had been established. An important feature of this mechanism was the separation of disputes of rights from disputes of interest. As a result of the repeal of sections 98, 99 and 100 of the Labour Relations Act, and the amendment of sections 106 and 107, compulsory arbitration was now by consent and was only applied in respect of disputes of right and with respect to disputes of interest where conciliation had failed in essential services only.

With regard to the powers of the Minister to fix maximum wages in consultation with a tripartite advisory council, he indicated that this power was not absolute and that a concerned party could apply for exemption. The same applied to minimum wages. Noting that Article 4 of the Convention allowed for "measures appropriate to national conditions" to be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and employers' organizations and workers' organizations, he said that it was within the ambit of these terms that measures were taken, in light of national conditions, to fix both minimum and maximum wages. He added that it was common prac-

tice to set a minimum level for the price of labour taking into account economic trends, the cost of living and the bargaining strength or weakness of labour. Similar considerations applied with regard to the approval of collective bargaining agreements, with a view to the protection of consumers and the general public, given the level of economic development of the country. In this sense, the law was not in violation of Article 4 of the Convention. Moreover, ministerial approval was given with a view to ensuring that agreements were within the confines of national law. He therefore concluded that the right to bargain collectively was not absolute under Article 4 of the Convention, although he would be guided by the interpretation of the Committee of Experts on this matter.

With reference to the concern expressed by the Committee of Experts with regard to section 25(1) of the Act, he said that this issue had been addressed by the amendment of section 23, which now linked workers' committees to trade unions. The purpose of the amendment was to ensure that the members of the workers' committee in an enterprise in which no fewer than 50 per cent of the workers belonged to the trade union operating in the sector were in fact members of that trade union. This meant that collective bargaining at the enterprise level was undertaken with the blessing of the trade union concerned.

With regard to the comments of the Committee of Experts regarding collective bargaining by prison staff and in the public service, he cited the information provided in document D.10. In conclusion, he submitted that the Committee should take note of these legislative changes and allow the Committee of Experts to examine them at its next session. The issues raised by the Committee of Experts were of a legalistic nature and the Conference Committee would need to take into account the views of the Committee of Experts in order to hold an informed technical discussion. He said that his country had benefited immensely from the comments made by the Committee of Experts, but hoped that the present Committee would not politicize a discussion which should be confined to technical issues. Finally, he said that the one remaining issue concerned the legislation on export processing zones, which provided that the Labour Relations Act did not apply in such zones, but which had inexplicably been left out of the labour law reform process up to now.

**The Worker members** expressed their gratitude to the Government for information provided and recalled that this case had been discussed the previous year. They regretted that the Government had not accepted the ILO mission proposed by the Committee last year, and that it had not transmitted to the Committee of Experts before January 2003 the draft amendments to the Labour Relations Act. This delay had interfered with the smooth functioning of the Committee of Experts. They stated that they had not been convinced that the draft law responded to the recommendations of the Committee of Experts, and that the analysis of the draft by the Committee of Experts still remained necessary.

The Worker members noted that section 22 of the Labour Relations Act, which authorized the Minister to fix, by statutory instrument, the maximum wage had not been repealed. They asked the Government to clarify its statement that the Minister did not have absolute competence in this regard. They recalled that the Committee of Experts in its latest report had asked the Government to take the necessary measures to amend or repeal section 17 of the Labour Relations Act, which provided that regulations made by the Minister prevailed over any agreement or arrangement. They regretted that the Government had not provided information in this regard.

The Worker members expressed their concern with respect to the human rights situation in Zimbabwe. They referred to cases of arbitrary arrest, torture and violations of the freedom of expression. They indicated, by way of illustration, that last April the Zimbabwe Congress of Trade Unions (ZCTU) had organized a demonstration to protest against the rise in oil prices and that on that occasion 20 members of the Confederation had been imprisoned. They also referred to Case No. 2184 of the Committee on Freedom of Association, concerning allegations that police officers had forcefully entered the premises of the ZCTU. In this case, the Committee on Freedom of Association had recalled that the entry by police into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities. The Committee on Freedom of Association had requested the Government to ensure that the principles of non-interference by the authorities in the meetings and internal affairs of trade unions were respected and to implement the order of the High Court of Zimbabwe to prevent police intervention in the meetings of trade unions in future.

Finally, the Worker members requested the Government to accept a direct contacts mission. They indicated that if it refused, they would be obliged to demand that the conclusions of the Committee on this case be placed in a special paragraph of its report.

**The Employer members**, noting that this was not the first time that the case had been examined by the Committee, regretted that the Government had not accepted the proposed direct contacts mission the previous year, which would have been useful in overcoming the difficulties relating to the application of the Convention. The main concerns of the Committee of Experts related to the lack of overall protection against interference in the internal affairs of employers' and workers' organizations, although the Employer members indicated that Article 2 of the Convention did not appear to contain specific provisions on the protection required in this respect. The Employer members noted the indication by the Government representative that proposals had been requested from employers' and workers' organizations before the new legislation had been considered. They called for full information on this matter to be provided in the Government's report.

With regard to compulsory arbitration and the amendments to the Labour Relations Act, they said that further detailed information would be required to obtain an overall picture of the situation with regard to the new legislation. In this respect, they emphasized that the imposition of compulsory arbitration should be an exception to the general principle of free collective bargaining. Without wishing to enter into abstract arguments about where the limits of compulsory arbitration lay, they advocated a step-by-step approach so as to develop conditions adapted to the specific situation. Nevertheless, they expressed doubt that these conditions should be set as high as suggested by the Committee of Experts, which called for them to be limited to an acute national crisis. On the other hand, the determination of such conditions should not be left to the discretion of the public authorities. The issue was therefore complex and needed to be weighed carefully, taking into account all the related aspects.

On the subject of section 17(2) of the Act, which provided that regulations made by the Minister prevailed over any agreement and arrangement reached by the social partners, they noted that this provision appeared to provide the Minister with broad discretion to influence very substantially collective agreements, particularly in the very important area of remuneration. Moreover, section 22 of the Act, by giving the Minister the authority to fix a maximum wage, constituted clear interference in the freedom of collective bargaining where such agreements had already fixed the level of wages. They added that the requirements set out in sections 25(2), 79 and 81 of the Act relating to ministerial approval of collective agreements constituted a clear violation of the right to collective bargaining and they noted an increase in national regulation and control in this area.

The Employer members observed, however, that the requirement set out in section 25(1) of the Act, under which an agreement reached between workers' committees and the employer had to be approved by the trade union and by more than 50 per cent of the employees was a more complex issue. It would be necessary to return to this matter and its compliance with Article 4 of the Convention once further information had been supplied. Nevertheless, they noted that all the measures adopted to control collective bargaining were enforceable by sanctions, including up to one year of imprisonment, which clearly showed the will of the Government to exercise strong control over the collective bargaining process. They further noted that the section of the Act relating to remuneration was entitled "wages and salary control", which clearly indicated the purpose of the Act. The Employer members had gained the clear impression that the Government was endeavouring to obtain complete control over the private economy, in violation of the general principles of a free market economy and free collective bargaining.

In conclusion, they said that it was essential for the Government to submit a full new report on the current situation as soon as possible. They added that a direct contacts mission would be useful in finding solutions to the existing problems, since several doubts remained concerning the compatibility of the new legislation with the Convention.

**The Worker member of Zimbabwe** recalled that the previous year his Government had been requested to transmit the Labour Relations Amendment Bill to the Committee of Experts for its comments to see if the amendments proposed had eliminated all the remaining obstacles to the right to free collective bargaining in law and in practice. Although the Bill had finally been adopted in December 2002, it was disturbing that there remained provisions which empowered the Minister to refuse to register a duly concluded agreement and to force the parties to renegotiate if he deemed it fit. This had occurred in practice when the Minister had refused to recognize an agreement duly concluded by the Employers' Organization for Farmers and the General Agriculture and Plantation Workers' Union. It appeared likely that this section would continue to be used by the Government.

With regard to protection against acts of interference and the scope of application of the Convention, the Government had been requested to take the necessary measures urgently, in full consultation with the social partners concerned, to ensure that workers' and employers' organizations were effectively protected against acts of interference and so that public servants not engaged in the administration of the State enjoyed the right to collective bargaining. He deeply regretted that the Government had deliberately decided to ignore this recommendation and had instead embarked on a path of intimidation, demonization and the crippling of the ZCTU. He emphasized that protection against acts of interference should not only be binding upon employers and trade unions, but that Governments should also refrain from interfering in the activities of the social partners. He therefore regretted to report that the ZCTU had suffered a series of abuses of human and trade union rights. Workers had been arrested, beaten and tortured and militias had been trained to create no-go areas for trade unions. Among the many victims, the General Secretary of the ZCTU had been arrested and beaten by the police. Information on the various acts of violence committed had been included in a database which was available for public examination. The interference by the Government had had the effect of curtailing the major functions and even the existence of the ZCTU and the task of organizing of trade unions in Zimbabwe had become a dangerous and risky occupation. Pressure was being placed on workers to join the ZCTU, which was being promoted by the Government as the only central trade union organization with which it wished to deal. When independent trade union leaders were arrested, they were normally charged with treason and were therefore liable for the death penalty. Nevertheless, in an effort to stabilize the environment in his country, the ZFTV had persuaded the Government to engage in a tripartite negotiating forum, which it had accepted in December 2002. Unfortunately, it had only accepted this tripartite process for its own advantage. The purpose of the process had been to develop a prices and wages stabilization protocol as a basis for a focused economic strategy. However, the process had been undermined when the Government had unilaterally increased fuel prices by over 250 per cent. He therefore appealed for the Committee to examine closely the manner in which the Government continued to violate the fundamental rights set out in the Convention.

**The Employer member of Zimbabwe** noted with pleasure the progress made in compliance with the Convention over the past 12 months. He indicated that the employers in Zimbabwe had contributed to the process leading up to the adoption of the legislative amendments adopted by organizing the maximum level of participation of employers in the process of labour reform. Although satisfied that there was adequate tripartite involvement in the development of the new provisions, employers in Zimbabwe felt that the amendments were more pro-worker than the original Act. They believed that this was at the expense of potential new investment in the country and that the alliance which appeared to be emerging between the Government and the workers' movement had resulted in a significant increase in the costs of doing business in the country through higher social benefit costs.

He indicated that the social partners had agreed, through the Tripartite Negotiating Forum, on an overall prices and incomes stabilization framework within which collective bargaining agreements for 2003 could be situated. Within the scheduled deadline of June 2003, all the collective agreements had been successfully concluded and no interference had been reported. He noted in this respect that the national employment councils were free to negotiate their own agreements, which were then registered under the law, and that in only one case had registration been withheld by the Government up to now. However, he noted that no dispute had been reported in this connection and that the employers in Zimbabwe were satisfied that market forces were effectively at work. In the sector concerned, namely agriculture, they noted that the fundamental structural changes had materially affected the employer base in the industry and that new employers therefore needed to become involved so as to develop an informed agreement. He added that, as requested by the Committee, the issue of the protection of workers' organizations against acts of interference by employers' organizations, and vice versa, had been addressed by Statutory Instrument No. 131/2003.

With regard to the imposition of compulsory arbitration in the context of collective bargaining, he expressed the belief that the amendment to sections 106 and 107 had simplified procedures. This was good for business, which required a predictable operating environment, which had sometimes suffered from the propensity of workers to resort to unprocedural industrial action. The new measure of direct referral to the courts, instead of labour officers, would make the process more expeditive. Furthermore, the innovative distinction of disputes into two categories, namely those respecting rights and those relating to interests, would be helpful in isolating remedies where parties engaged in essential services were in dispute, while leaving the normal procedures set out in collective bargaining agreements unaffected.

With regard to other limitations on the right to collective bargaining, he expressed concern about the powers vested in the Minister to set maximum wages. While appreciating the need to narrow income disparities, he believed that the market should be the standard upon which wages and salaries were determined. If such powers were exercised in an arbitrary manner by the Minister, in addition to being in contravention of the Convention, this would be detrimental to the proper functioning of the labour market. However, he noted that although the provision had been in existence since 1985, it had never been applied by the Government. Even though the Committee might believe that this provision was in violation of the Convention, he preferred to take a more pragmatic approach based on historical practice, while at the same time endeavouring to convince the other social partners that it was unnecessary and should therefore be removed from the statutes. The role of Government should be merely to register, and not to approve collective bargaining agreements, which should be left to the two parties. In conclusion, he reaffirmed that the new law, although it could clearly be improved, was substantially in compliance with the Convention.

**The Government member of the Seychelles** said that it appeared that the Government of Zimbabwe was committed to bringing its legislation into line with the Convention and emphasized that it should be assisted and encouraged in this process. The Government's desire to cooperate had resulted the previous year in the adoption of the Labour Relations Amendment Bill. Recalling that in Africa and other developing countries, the people were still walking the walk to freedom, he emphasized that what was important was that they were more committed than ever to improving the lives of working men and women. The focus was the achievement of sustainable development through good industrial relations and he trusted that Zimbabwe subscribed to this principle.

**The Government member of Mozambique** welcomed the great commitment shown by the Government of Zimbabwe. He believed that recent amendments to the Labour Relations Act, adopted with the assistance of the ILO, was proof of that commitment. He emphasized the need for all forces of good will to help Zimbabwe. The social partners had to unite in order to participate in the application of standards and the ILO should continue its efforts to achieve this goal.

**The Government member of Malawi** expressed the opinion that, in view of the information provided by the Government of Zimbabwe, it was not necessary for the Conference Committee to examine this case. The Government was doing its best to cooperate and comply within the shortest possible time with the recommendations made by the Committee the previous year and it was an old legal tradition that a fair court did not punish a person twice for the same offence. The Conference Committee was renowned for its high integrity and fairness and should take care not to lose these traditional qualities. In view of the good will shown by the Government, it was therefore, now, the time more than ever before, to encourage it to continue its progress with ILO assistance and in collaboration with workers, employers and other interested parties.

**The Government member of the Libyan Arab Jamahiriya** after recalling that Convention No. 98 was a fundamental Convention, welcomed the new information provided by the Government, and particularly the adoption of legislative amendments following consultations with all the parties concerned. It appeared that the amendments took fully into account the principles of the Convention. All of the new information provided should be forwarded to the Committee of Experts for review. Finally, he said that the provision of technical assistance on a tripartite basis would be an excellent means of helping the country make further progress.

**The Employer member of South Africa** recalled that the previous year Zimbabwe had been found by the Committee to be in breach of Convention No. 98, but that the Government of Zimbabwe had not agreed to accept a direct contacts mission to help improve the situation. Nevertheless, the country was receiving assistance under the ILO/Swiss project on social dialogue and dispute settlement in southern Africa. The social partners had contributed through the Tripartite Negotiating Forum to the development of legislation which had reduced the areas that were in conflict with the Convention. But this process had left unattended significant problems commented upon by the Committee of Experts. One of these concerned the authority given to the Minister to fix maximum wages, after consultation with the Minister of Finance. Employers were required to comply with the wage levels established, under threat of a fine or imprisonment of up to one year. The law also required the approval of collective agreements by the Minister in

order to ensure that their provisions were in accordance with national laws and were not inequitable to consumers, members of the public or any other party to the agreement. The Minister could direct the parties to amend such agreements. If they did not do so, the Minister was empowered to amend the agreement directly as necessitated by the national interest.

He recalled that international Conventions existed to create a better life for the population. Although the Government endeavoured to justify its position on the grounds of national interest, he recalled that recent years had seen a major decline in the economy of Zimbabwe, with rampant inflation and a rapid fall in real GDP. Clearly its policies were not working and economic activity was in sharp decline. The present Committee could be of great assistance to the people of Zimbabwe in this regard by calling upon the Government to adopt sound policies based on tripartite agreement. The case should be examined by the Committee once again next year to ensure that the necessary changes had been made.

**The Worker member of Nigeria** stated that, despite the recent steps taken by the Government and the discussion which had taken place in this Committee the previous year, the amended law continued to contain elements that were in breach of the Convention. In particular, the Government still had the power to prescribe maximum wages and the new Act gave the Minister veto power, by allowing him to refuse to recognize a collective agreement freely and duly negotiated and signed by the social partners. He therefore expressed the view that the achievement of progress should not be assumed just because of the enactment of a law when this law continued to be in violation of the Convention. On the contrary, the fact that the Government maintained such violations in disregard of previous criticisms showed that it did not have any real intention of changing its practices. The Government representative had made an attempt to justify the continuing restrictions placed on collective bargaining and to lecture the Committee on the reasons why the Government should maintain control over the economy. He rejected this approach, which assumed that the Government had exclusive competence over economic matters and was in possession of the monopoly of knowledge, and that no benefit could be drawn from the participation of the social partners in the economic life of the country. This stance explained the country's current socio-economic crisis. National economic conditions could not be invoked to justify violations of Article 4 of the Convention. The Convention applied to all countries regardless of their level of development and its provisions were not based on the condition that only flourishing economies should be under an obligation to respect them. He associated himself with the statement by the Worker member of Zimbabwe, who had explained how the Government had rendered the exercise of freedom of association impossible by criminalizing trade unionists for organizing, engaging in collective bargaining and staging strikes. In particular, the police were allowed to stop trade union meetings and armed thugs were used to attack and assault trade union leaders. Foreign trade unionists were not spared such intimidation. The Director of the Commonwealth Trade Union Congress had visited the country at the invitation of the workers and the Ministry of Labour and had almost been deported without having committed any offence. The next day, a trade unionist working on child labour had been denied entry into the country. The right to collective bargaining could not flourish under such conditions. He urged the Conference Committee to send a clear signal to the Government that trade union freedoms and the right to collective bargaining should be fully respected in accordance with the Convention.

**The Worker member of Norway**, **speaking on behalf of the Worker members of the Nordic countries**, noted that the Government had now provided its reply to the observations made by the Committee of Experts and had adopted amendments to the Labour Relations Act. The amended Act seemed to be more in compliance with the Convention than the former labour laws, although some serious limitations remained, especially concerning the right to strike. She emphasized that the reason why the workers were not applauding this new law, although conditions for trade unionists might now look better on paper than they did a year ago, was that there had not been any signs that the law was being implemented in practice. Instead, there had been too many violations of workers' and other civilians' rights over the past year: trade unionists were prevented from holding ordinary meetings and organizing activities; strikes and rallies were forbidden by the authorities; union leaders were being arrested, intimidated and tortured; and trade union colleagues from other countries were being denied entry to the country in many instances. She emphasized that the core of the matter was the lack of any correspondence between, on the one hand, the content of ratified ILO Conventions and labour laws and, on the other, actual practice. The numerous incidents referred to during the discussion had demonstrated that the new labour law and the Convention were not being implemented in practice. One of the reasons for this was the adoption of the draconian Public Order and Security Act, which sidelined international conventions, as well as the new labour law and had been actively used to obstruct trade union activities and to allow the harassment, intimidation and even murder of workers. She observed the paradox which existed between the fact that Zimbabwe now had better legislation than before, while at the same time workers' rights were being violated more than ever before in the history of the country. This case clearly illustrated the large gap which existed between the adoption of laws and the ratification of Conventions and their implementation in practice. She emphasized that what really mattered was the way in which workers and their families were treated. The practices followed in Zimbabwe today were intolerable and certainly not in compliance with the Convention. Nordic workers were following this situation very closely and welcomed the fact that the Government had expressed its belief in tripartism and social dialogue. But experience showed that good dialogue could only take place in an appropriate context, with mutual respect for the views of each party. This was unfortunately not the situation in Zimbabwe today. She therefore requested that the conclusions on this case be included in a special paragraph of the Committee's report.

**The Worker member of Brazil** expressed her interest in the information provided and efforts made by the Government of Zimbabwe. She indicated that this country had been a victim of colonialism and apartheid for decades, and that no one had spoken of freedom of association and collective bargaining for all those years. She expressed her surprise that at a time when the Government had started to require the implementation of the agreement on the distribution of land signed 20 years ago, allegations had started to be made of non-compliance with the Convention. She emphasized that Zimbabwe and most of Africa wished to overcome their difficult economic situation, and that it was necessary to offer them support and solidarity. If this Committee and the ILO continued to discriminate against the poor and independent countries, they would have to denounce many of the ILO's Conventions, which would be regrettable.

**The Government member of Cuba** indicated that the comments of the Committee of Experts related to the draft of amendments to the Labour Relations Act which, according to the statement by the Government representative, had already been adopted by Parliament in December 2002, after the meeting of the Committee of Experts, and contained a number of changes related to the application of Convention No. 98. She also noted that special regulations related to the application of Article 2 of the Convention had been adopted, which was also related in a number of ways to the application of the Labour Relations Act. She indicated that this was a complex subject and that it was premature to make a judgement on the oral information received recently. The legal analysis of the new legislative provisions and their conformity with the Convention lay within the competence of the Committee of Experts, and the Conference Committee should therefore confine itself to taking note of the Government's explanations and transmitting the information to the Committee of Experts. She stated that it was unacceptable to include matters in the debates which had not been addressed in the report of the Committee of Experts and that certain members exerted pressure and threats against governments to make them accept what was proposed. It would be more fruitful if the Committee took note and expressed its gratitude for the information provided by the Government, and she asked the Committee to transmit the information and the new texts to the Committee of Experts so that they could be examined. Finally, she indicated that the technical assistance of the ILO could be beneficial for the Government and the social partners.

**The Government member of Namibia** stated that after reading the Government's report to the Committee of Experts and listening to the explanations provided to the Conference Committee, his delegation had three points to make. First, he observed that the concerns expressed by the Committee of Experts had been addressed through the adoption of the Labour Relations Amendment Bill in December 2002. The legislative text had since been communicated to the Committee of Experts. Second, he took note of the fact that the Government representative had expressed the wish for the Committee of Experts to be given the opportunity to examine the new legislation before any conclusions could be drawn. Third, he noted that a legislative reform process was under way with the participation of all the social partners and with technical assistance from the ILO in the framework of the ILO/Swiss project on social dialogue and dispute settlement in southern Africa. He therefore concluded that this Committee should allow sufficient time for the Committee of Experts to examine the legislation transmitted by the Government and assess whether it was in conformity with the Convention.

**The Government member of Finland**, **also speaking on behalf of the Government members of Denmark, Iceland, Norway and**

**Sweden**, noted the information provided by the Government, both orally and in writing, on the adoption of the new Labour Relations Amendment Bill. She also noted that the conformity of this legislation with the requirements of the Convention still needed to be assessed by the Committee of Experts. She requested the Government to ensure that other legislative provisions which might affect the application of the Convention be amended accordingly so that the Convention could be fully implemented in practice. She therefore urged the Government to do its utmost to ensure that the fundamental rights enshrined in the Convention could be exercised in an environment that guaranteed peace, democracy, social justice, respect for human rights and the rule of law. She encouraged the Government to accept technical assistance from the ILO in order to promote the implementation of the Convention and to hold consultations with the social partners on measures needed for the achievement and maintenance of peace and social justice.

**The Government representative** thanked the members of the Committee for the debate which had taken place. He repeated that his Government had submitted information in writing on the measures taken since the last meeting of the Committee in response to the comments made by the Committee of Experts. The Government, in collaboration with the social partners and on the basis of social dialogue, had developed new legislation, which had been presented to the Committee of Experts. It was now up to the Committee of Experts to review the conformity of the new law with the Convention and pronounce itself on any remaining discrepancies. He emphasized that legislative reform had taken place with the support of ILO experts and the ILO/Swiss project, with a view to complying with ILO Conventions. He wished to place on record that his Government was still reviewing the matter and would comply with any observation which was in the interests of the social partners.

With regard to the issues raised by several members, he wished to emphasize that the Government had the will to govern the country and would continue to do so based on the electoral mandate it had received. However, he noted that the Government was being accused of violations by organizations based outside the country and which were intent on funding acts of violence in the country. However, such organizations did not take into account the victims of the illegal acts committed by those whom they sponsored. He expressed concern at the fact that, as soon as such persons were arrested for having committed illegal acts, they claimed the right to protection as trade unionists, even though their acts, such as the destruction of a public bus full of workers at 4 a.m., showed no respect for workers. Such persons nevertheless claimed that they should not be punished for such acts due to their trade union status. He emphasized that the rule of law should apply equally to all citizens, and especially to those who had committed illegal acts aimed at overthrowing a legitimately elected government. The Conference Committee was being subjected to misinformation in this respect. The Government took great care to distinguish genuine trade union activities from such illegal activities. His Government had respect for workers and acknowledged that they should not be victimized for carrying out genuine trade union activities.

He reported that the previous year, a high-level mission of trade unionists from African countries had visited the country, invited by workers' organizations, and had held a long meeting with the President. The mission had gone on to verify the situation on the ground. They had seen for themselves that the alleged violations were not true. He emphasized that Zimbabwe did not have the power in the international media to defend itself against the defamation being levelled at it. The situation in the country was very different from the one depicted to the outside world. The country was being penalized for attempting to take back its land from a former colonial power. At the same time, however, such countries were never criticized for refusing entry to persons coming from their former colonies. He emphasized that the international community should no longer allow such double standards to be maintained.

He expressed confidence that the Committee of Experts, as a principled body, would examine the conformity of the legislation submitted with regard to the provisions of the Convention. However, he believed that the real issue before the Committee was the need to allow a developing country to chart its own process of development in a tripartite manner. He recalled, in response to the suggestions made that a tripartite forum should be set up in the country, that a Tripartite Negotiating Forum had been established and had been functioning since 1998, leading in 2003 to the conclusion of agreements with the social partners, which were implemented at the national and workplace levels. In reference to the work of the Parliament Portfolio Committee on Labour, he noted that this Committee had been heavily involved in the labour reform process since 2000. This Committee had received written submissions from the social partners and civil society and had convened a public hearing on the draft labour legislation. The recently adopted Act had therefore been the subject of public debate on the basis of the comments made by the Committee of Experts and with the participation of the social partners and civil society. He added that labour law reform was a continuous process. Any comments made by the Committee of Experts, after it had examined the new legislation, could therefore be taken on board by the Portfolio Committee.

**The Worker members** requested the Government as a matter of urgency to provide the information requested by the Committee of Experts in its annual report. Noting the Government's lack of good will and its refusal to accept a direct contacts mission, they asked for the conclusions of the Committee on this case to be placed in a special paragraph of its report.

**The Employer members** associated themselves with the statement made by the Worker members.

**The Committee took note of the written information submitted by the Government, the oral statement made by the Government representative and the ensuing discussion. The Committee noted once again that the comments of the Committee of Experts dealt with problems relating to the application of Article 2 (protection against acts of interference), Article 4 (promotion of collective bargaining) and Article 6 (scope of application) of the Convention.**

**The Committee noted the Government's statement that in the context of the ongoing reform of the labour legislation, the amendments to the Labour Relations Act adopted on 7 March 2003 and that the statutory instrument on the protection of workers' organizations against acts of interference by employers' organizations and vice versa had been adopted in 2003. Noting that the Committee of Experts had made certain comments on the provisions of the draft amendments transmitted with the Government's report, the Committee considered that it would be appropriate for the Committee of Experts to examine the conformity of the amended legislation with the provisions of the Convention.**

**The Committee nevertheless noted with concern the allegations made concerning the persistent violations of the Convention in law and in practice. The Committee expressed firm hope that in the very near future the necessary measures would be adopted to guarantee that the rights set out in the Convention were effectively applied to all workers and employers, and to their organizations. The Committee requested the Government to provide detailed information in this regard in its next report so that it could be examined by the Committee of Experts.**

**The Committee noted that the Government was willing to accept technical assistance and requested it to accept a direct contacts mission to examine the whole situation *in situ* and to inform the Committee of Experts on legislative developments and on the outstanding issues. The Committee decided to include its conclusions on this case in a special paragraph of its report.**

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

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

***Islamic Republic of Iran*** (ratification: 1964). **A Government representative** stated that her country accorded high priority to the protection and promotion of fundamental rights and had taken concrete efforts to ensure that the Iranian people enjoyed all fundamental rights. The Islamic Republic of Iran was facing various challenges in its movement towards development and the cornerstones of the reform policies were upholding, among other matters, the promotion and protection of non-discrimination. The speaker pointed out that her Government was not claiming that there was no discrimination in the Islamic Republic of Iran as no country had a perfect record on this issue, but that it was important to recognize that the overall movement was highly positive and encouraging. Nevertheless, the Government of the Islamic Republic of Iran continued to be fully committed to the protection and promotion of human rights and was determined to pursue the necessary policies to this end. Recalling her Government's preparedness to cooperate closely with the ILO to eliminate and combat discrimination in employment and occupation, the speaker listed a number of measures taken in the Islamic Republic of Iran. These included the expansion

of the "human rights advocates network" in 2002 ; the holding of training courses for human rights advocates on the Islamic Republic of Iran's commitment in terms of human rights and ILO Conventions; meetings by high-ranking officials aimed at developing expert approaches and solutions to combat discrimination against unrecognized religious minorities; and two conferences held in 2002 within the framework of the agreement between the Islamic Republic of Iran and Denmark, concluded in 2001, on "Women's Rights" and "Freedom of Expression and Belief" (Tehran) and on "the Rights of the Child" and "Rights of Minorities" (Copenhagen). Furthermore, the Women's Friendship Society jointly established by Belgium and Iran promoted ties between the women of the two countries aimed at capacity building and empowerment of women. In addition, an increasing number of women had been appointed to higher judicial ranks and the Islamic Republic of Iran's female head of court had started her work at the bench in the Isfahan Province. The speaker further provided information on the number of women holding licences to publish magazines, women chief editors, and women employed in the Islamic Republic News Agency and female managers in the Iranian Defence Ministry, and pointed to the increase in the number of women's non-governmental organizations and the inauguration of a Women's Technical and Professional Institute in May 2002.

With respect to the legal measures taken and modifications in the legislation requested by the Committee of Experts, the speaker mentioned that the judiciary had established the High Council of Judicial Development which had studied the necessity of amending certain articles of the Civil Code. An ad-hoc Commission of the Council was working in close cooperation with the Parliament's Research Centre to remove shortcomings in legislation with regard to women. The reviews and amendments of laws and regulations covering all aspects of civil life was currently taking place and three projects in three different organizations to amend the legislation on women's civil rights were ongoing.

With respect to certain provisions of the Civil Code, the speaker noted that the Women's Social and Cultural Council had designed a comprehensive project for amending the Civil Code, the proposals of which would be presented to Parliament. The Women's Participation Centre had submitted a proposed amendment to section 1117 of the Civil Code and the Committee of Experts would be notified of any changes on this subject in due course. The attention of the Conference Committee was also drawn to the modifications made to certain other sections of the Civil Code, notably, section 1107 (alimony allocations for women), section 1110 (payment of alimony to widows), section 1130 (grounds of divorce) and section 1133 (women's rights to divorce).

Regarding women's employment, the speaker provided some examples of the Government's efforts, such as certain laws passed to speed up privatization and attract foreign capital and efforts to prohibit government monopolies in strategic areas and to lower interest rates by banks, aimed at encouraging development and improving the employment situation in general, including women's employment. The Government representative further recalled that the Government had invited a technical team from the Office to assess the needs of technical assistance in the area of the promotion of women's employment. This was a significant step towards using international expertise and technical assistance to build up national capacity. In March 2002, the ILO team had met with the relevant officials in Iranian universities and with representatives of the Government and of non-governmental organizations. As the first phase of the ILO's Project on Women's Empowerment, a National Tripartite Conference on Women's Empowerment was due to be held in October 2003. It was hoped that the holding of such a gathering would contribute to further national capacity building in this area. The Government also hoped that it would be able to inform the Committee of Experts, in its next report, on positive and tangible results of the ILO project.

With respect to the promotion of equal access of religious minorities to work, the speaker highlighted several aspects in law and practice of an improved situation of these minorities in the Islamic Republic of Iran. In implementing the principles contained in articles 20 and 28 of the Iranian Constitution regarding equal legal protection of all Iranian citizens, the Government had declared in a circular the observance of the social and civil rights of all Iranian citizens as the country's official policy. This had been reiterated in Government Circular No. 11-4462 of February 1999 under which all ministries, organizations and governmental institutions were required to make effective efforts to ensure full observation of the rights of recognized religious minorities in the area of recruitment and employment. Government bodies were equally required to include and specify the issue in job vacancy advertisements, so that in the case of a successful recruitment test, the Government could benefit from the expertise of minorities by the Government. Further, with respect to religious minorities, the National Recruitment Board had issued an official Circular No. 2/47474 of November 2002 to the Interior Ministry, to be communicated to the provinces, which emphasized the need of further observance of the rights of recognized religious minorities, particularly with regard to employment and recruitment. Regarding the employment of religious minorities in the education sector, the speaker noted that 200 posts of the recruitment quota of the 3rd Five-Year Development Plan had been allocated to the recruitment of religious minorities in the Education Ministry for the academic year of 2003-04. Religious minorities had also been allocated financial facilities through presenting "job-creation investment projects" to executive bodies countrywide. In the housing sector, executive plans and projects were focused on low-income minorities, and the construction of rental housing units and of rural housing for both Muslim and religious minorities had been planned and implemented.

The Government representative further indicated that the efforts taken to promote the establishment of trade and expert associations in order to promote trade and business owners and specialized occupations had resulted in the setting up of more than 200 associations. A list of associations and organizations of religious minorities had been submitted to the Committee of Experts. She further stated that for 2001, 520 Christian women, 385 Zoroastrian women and 177 Jewish women had been recruited and employed in governmental bodies. The number of Christians employed in the public sector had risen to 520 women and 593 men, compared to only 363 women and 470 men in 1979. For the same period, the number of Zoroastrians employed in the public sector rose to 385 women and 276 men from 185 women and 113 men; the number of Jews employed rose from 177 women and 169 men compared to 86 women and 132 men.

Finally, the speaker once again, drew the attention of the Committee to her Government's readiness for cooperation based on mutual understanding with the ILO. It was notable that during recent years, cooperation and ties between the Islamic Republic of Iran and the ILO had improved considerably. Regular consultations and ILO missions to Iran had taken place at various levels on reviewing the Labour Code, improving social dialogue, upgrading freedom of association, expanding cooperation with the ILO Training Centre in Turin, developing a Project on Women's Empowerment and Gender Equality in the Islamic Republic of Iran, implementing the ILO/UNDP Project on Poverty Eradication, and on many other issues. Invitations had also been extended to the ILO, ICFTU and WCL. The speaker concluded by expressing the hope that the Committee would appreciate and apply a stronger and more constructive role in this process. If Convention No. 111 were indeed to be fully implemented due consideration needed to be given to promotional activities and national capacity building. In this respect the Islamic Republic of Iran wished to continue its cooperation with the ILO mechanisms and invited the Organization to make its technical and advisory services available to the Islamic Republic of Iran to review its laws and regulations in terms of their compliance with the provisions of Convention No. 111.

**The Employer members** thanked the Government representative for the detailed information provided to the Committee. They recalled that the Committee had some 20 years of experience with the issues of this case and noted that considering the Committee of Experts' report, this was overall a case of progress. Progress had been very slow, but improvements were obvious, as numerous institutional and other measures to eliminate discrimination had shown. The Employer members noted positively that even though discrimination on the basis of sex had a long tradition in the Islamic Republic of Iran, progress had been achieved in the participation of girls and women in the educational system from primary school up to university. A further translation into a comparable participation of women in employment was necessary. The Government was requested to provide further statistics in this regard. The Employer members further noted that female candidates for parliamentary elections had increased and that the number of women employed in male-dominated professions had risen as well. Despite the fact that there were now a number of female judges, there was no equality yet in the judiciary, as the issuing of verdicts appeared still to be the domain of male judges. The Employers members requested the Government representative to comment on whether female judges would be on an equal footing with men in this profession in this respect. The Employer members further noted the improvement of opportunities for women to obtain work in technical professions.

Referring to the statement of the Government representative to the effect that not all problems had been resolved, the speaker referred to the obligatory dress code, wondering why no progress was possible on this issue. The possible sanctions for violations of a dress code certainly had a negative impact on the position of women in the labour market, particularly in the public service. The Gov-

ernment was asked to provide the requested information to the Committee of Experts on this issue. The Employer members further stressed the need for progress with regard to section 1117 of the Civil Code, noting the involvement of the Centre for Women's Participation in efforts to address this question. They hoped that further progress would be possible on the outstanding issues in the near future.

In addition, the Employer members noted that the overall employment situation of women belonging to recognized religious minorities was better than average, but wondered how the situation was in the public service. They recalled that the members of the Baha'i faith had been subjected to discrimination for a long time and that the Labour Code would not prohibit religious discrimination. Despite the fact that the Special Representative of the United Nations Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran had been able to note some signs of hope and the opening of one university to the Baha'is, this community remained in practice the object of discrimination in employment and education. The Islamic Human Rights Commission considered that legislative changes were also necessary. Referring to the situation of ethnic minorities, the Employer members asked the Government to provide the information requested by the Experts. The speaker also highlighted that the recent collective contract covering workers in workplaces with less then five employees did not contain a non-discrimination clause. Finally, the Employer members took note of the impressive work programme adopted for 2002-03 under the Memorandum of Understanding between the Government and the ILO, including with regard to the formulation of policies for creating greater access of women to the labour market. In this context, the Employer members stated that progress in the Islamic Republic of Iran would ultimately depend on political developments, and experience had shown that substantial setbacks might occur in the field of civil rights. They reminded those who looked backwards that States which did not live up to their international obligations in the field of human rights would isolate themselves, damage their economies and development and finally their own people. The Employer members supported those who wanted to eradicate discrimination, which had existed for decades.

**The Worker members** stressed that inclusion on the list of individual cases was not a negative sanction, but discussions in the Conference Committee were constructive work that could help to overcome existing problems. Likewise, a footnote in the report of Committee of Experts, which was considered by all as objective, impartial and independent, and even special paragraphs in the Conference Committee's report, should not be perceived as sanctions. This case had a long and bad history, but it had finally resulted in some progress. However, in no way the situation could be simply left in the hands of the Government, as this was a process of checks and balances. The Worker members only trusted information that had been examined and analysed by the Committee of Experts. They had sympathy for the Government and for the ILO missions when they argue that the progressive forces in the country should be strengthened by praising the progress made, rather than playing in the hands of the conservatives who want to roll back the reforms. However, one should note that politics in the Islamic Republic of Iran were made by politicians, as elsewhere, and that they had their own interests. If these interests were not at odds with ILO values, they would promote them; if not, they would stab the values in the back. On a critical note, the Worker members deplored the fact that the Government had exploited that the Islamic Republic of Iran had not been put on the list of individual cases last year at home by giving the public the impression that the ILO now considered that all problems had been solved. That this was not the case was well known by the Government, particularly as the Worker members had asked the Committee of Experts last year to provide another comment to the Conference Committee with a view to discuss it this year.

The Worker members noted that the general tone of the Committee of Experts' report was positive, drawing attention to the functioning of human rights mechanisms, improvements as regard discriminatory practices on the basis of sex and religion, as well as regards contacts and cooperation with the ILO. There was indeed an impressive work programme for the years 2002-03 with very interesting elements and the Worker members were confident that the cooperation efforts would bear fruit. These improvements should however not divert from the shortcomings. According to the Committee of Experts, there were only a small number of remaining problems. These included the well-known points relating to the obligatory dress code, section 1117 of the Civil Code and the restriction on women judges to issue verdicts. In addition to these critical main points, the Committee of Experts asked for further progress and additional information on a number of other issues, including with regard to the situation of recognized and unrecognized minorities. The Government should in particular take a broader approach to combat discrimination against the Baha'is by taking active promotional measures to correct misperception held by the population, which the Government itself had encouraged. The Employer members had also urged the Government to make a serious effort to answer all the Committee of Experts' questions and the ILO was encouraged to do its own fact-finding. The Worker members suggested that a permanent ILO presence in the country should be given serious thought, despite the financial implications.

However, the Worker members raised serious doubts as to whether the issues taken up by the Committee of Experts were in fact the only remaining problems. For instance, according to indications given by Worker representatives from the Islamic Republic of Iran, several discriminatory practices against women existed in the fields of social security, pensions and in employment, both in law and practice, which were so common that the Iranian workers would call them the "unwritten law". The Worker members expressed their disappointment that these alleged shortcomings had not been brought to the attention to the Committee of Experts. The Iranian workers also had reported that the ILO missions had entered into an intensive dialogue with the Government, while paying less attention to the workers and employers. However, the Worker members stated that it was believed that the ILO would not have made such a mistake. Nevertheless, the matter should be clarified. A further issue of importance that the Committee of Experts should discuss in their next report was the practice of *gozinesh*, as reported by Amnesty International in their document prepared for this International Labour Conference. According to Amnesty International this practice of cooperation for all those seeking employment in the public sector and in parts of the private sector impaired equality of opportunity in employment and occupation on the grounds of political opinion, previous political affiliation or support, or religious affiliation. This practice contravened article 23 of the Islamic Republic of Iran's Constitution. The speaker stated that he would formally submit Amnesty International's document to the Office, with a request that the Committee of Experts take this issue up with the Government.

The Worker members concluded that its was useful to discuss the case of the Islamic Republic of Iran again in the Conference Committee in order give the Government credit for positive developments and to address ongoing violations or possible violations of the Convention. The Worker members hoped that the Government would recognize the constructive spirit in which these observations had been made. It was hoped that the Committee of Experts would be able to confirm in its next report the basic assessment that things were significantly changing.

**The Employer member of the Islamic Republic of Iran** thanked the Committee of Experts for their report which contained welcome advice. He recalled that the Confederation of Employers of Iran had been formed four years ago, which had led to stronger participation of social partners in decision-making. His organization appreciated the ILO's activities in the Islamic Republic of Iran and he urged the Government to continue to take action that would result in the elimination of all existing divergences between the Convention and the national situation. It was hoped that the increasing technical cooperation from the ILO would facilitate this process and that the Government would be soon able to report further progress. The comment made by the Committee of Experts on the absence of a non-discrimination clause in the collective contract mentioned in paragraph 14 of their observation would be taken into serious consideration and further action would be taken accordingly. In his view, the employers respected Convention No. 111 and there was no religious discrimination on their part. With regard to the position of women in the labour market, the speaker emphasized that women now chose a variety of jobs; they were running factories, small and medium-sized enterprises, and are engaging in research and engineering and other non-traditional occupations. There were female members of his organization, the Chamber of Commerce, and women also worked in several ministries and constituted 70 per cent of managers of non-governmental organizations. Women entrepreneurs should play an important role in job creation.

**The Worker member of the Islamic Republic of Iran** noted that this case was an old case with more than two decades of history with ups and downs in its process. He mentioned that there had been some improvements but there were still things to be done to fully comply with Convention No. 111. The speaker referred to the Act which exempts the application of the Labour Code in workplaces and businesses of five or less employees and stated that this law was an open violation of Convention No. 111. Although a collective agreement had been signed and duly confirmed by the Ministry of Labour, this agreement had still not been implemented in some of

the provinces and discrimination continued to exist. He recalled that his trade union had lodged a complaint against the Government in relation to the law on support and growth of the carpet industry, which exempted carpet weaving units from labour and social security laws. The speaker wondered why the Committee of Experts had not referred to this law, as this was an open contradiction to Convention No. 111. He also referred to the question of the Baha'is, their percentage in relation to the total population was very nominal and to the fact the Baha'is did not have general public acceptance due to their religious and cultural particularities. He stated that the measures taken by the Government regarding this question were recommendable and no further pressure should be exerted as it would have a negative impact on public opinion. The workers had more important issues than the question of the Baha'is, such as the legislative problems mentioned above.

In addition, the speaker referred to two instances of discrimination on the basis of sex. He indicated that where husband and wife, both being insured workers, retired, the wife was neither entitled to receive child allowance, nor to her husband's pension benefits if the latter died. The speaker requested the review of the relevant provisions of the law as not only men should be considered to be breadwinners. The speaker also referred to the common practice that at the time of employment girls had to agree to not get married and to confirm that they would not get pregnant. This practice was not allowed under law but occurred nonetheless, since many women worked under short-term contracts, which were not renewed if they did not abide to these requirements. Finally, he urged for more efforts to be undertaken so that the Government of the Islamic Republic of Iran fully implement Convention No. 111.

**The Worker member of Pakistan** endorsed some of the concerns expressed by the Worker members and the Worker member of the Islamic Republic of Iran concerning the issue of social security and effective application of labour laws. He had noted the commitment expressed by the Government representative to abide by the international obligations and to further improve the situation. Referring to the comments made by the Committee of Experts, he recalled a number of points where progress had been made, but concerns remained as expressed in paragraph 9 concerning certain restrictions on women's employment and in paragraph 12 concerning the education and employment of members of unrecognized religions. These points needed rectification. He confirmed that the Memorandum of Understanding signed between the Government and the ILO was a positive step, but that the social partners needed to be strengthened in order to play an effective role in the social and economic development of the country. He urged the Government to take steps to improve the current situation and to eliminate any remaining contradictions with the Convention, including matters regarding social security and the abuse of contract labour.

**The Government member of India** supported the measures taken by the Government and underlined that no country in the world was perfect with regard to the application of this Convention. He expressed his surprise at the large number of issues related to human rights taken up by the Committee of Experts. These should rather be discussed within the United Nations than the ILO, which dealt with labour and employment issues. The speaker also was of the opinion that there were some inconsistencies in the Committee of Experts' observation. One could, for instance not speak of discrimination against minority women if in fact these groups were in a better position than others. The Government member stated that it was unclear how the list of cases was selected, observing that only developing countries had been targeted. Finally, he stressed the need to ensure cultural sensitivity in the conduct of missions.

**Another Government representative of the Islamic Republic of Iran** stated that he did not believe that Iran should have been included in the list of individual cases. However, his Government attached great importance to the international mechanisms, including those of the ILO, which helped to improve the situation of workers and employers and of human society as a whole. Noting that the discussion should focus on progress made and not on isolated cases, he pointed to the importance of promotional activities and the contribution provided by ILO technical services. He agreed with the Worker members in reference to the need to eliminate misperceptions in the population about unrecognized minorities, but would like to conclude that social, legal and cultural changes required time and a consensus needed to be built. There was a need for dialogue and interaction with the various institutions of civil society in order to have a common position. The problem was not only in the legislation but also in people's perception of certain groups. He stated that his Government was committed to discussing and focusing on the promotion of the civil rights of all citizens regardless of their religious or ethnic background. The speaker further indicated that it was important that these changes be perceived as advantageous by all citizens. He was heartened by the fact that every Iranian citizen believed in what the country was doing. He added that the ongoing reform was undertaken, not for the ILO, but for the Iranian people and was deeply rooted in the Islamic Republic of Iran. Referring again to the statement of the spokesperson for the Worker members to the effect that the Islamic Republic of Iran was playing games with the ILO mechanisms, he stressed that this had not been and would not be the Government's intention. As regards the comments related to the dress code, it should be noted that there had not been any dismissals of those who had not complied with this dress code. As for the situation of women judges, this was a tradition and Iranian women were actively promoting their rights. In response to the questions raised concerning the practice of *gozinesh* he agreed that this needed to be discussed with the Committee of Experts. He informed the Committee that a Bill had been adopted in Parliament asking for a review of this institution. He concluded by expressing his Government's interest in continuing the cooperation with the ILO.

**The Employer members** welcomed the new explanations provided by the Government representative of the Islamic Republic of Iran and raised again the issues of the restrictions for women judges on the issuing of verdicts and the dress code. They asked the Government to clarify whether a difference in the judicial profession existed as requested by the Committee of Experts in its observation. Referring to the observation on the existing dress code, the Employer members recognized that an exact assessment of the real situation was not possible, but that sanctions could have deterrent effects and existing legislation also had a considerable symbolic effect.

**The Worker members** welcomed the stated commitment of the Government towards further change. With regard to the Baha'is, they clarified that the relevant laws and practice must be in line with the Convention. The Worker members hoped that the Government would provide replies to all the open issues to the Committee of Experts and that they would be able to find them in the Committee of Experts' next report.

**The Committee noted the statements made by the Government representatives and the discussion which followed. It recalled that this case had been discussed in the Committee for more than 20 years, most recently in June 2001, when the Committee noted with interest the developing dialogue between the Government and the ILO. The Committee had requested that this dialogue should include a new mission by the Office to monitor the application of the Convention, joint efforts to implement it in practice and assistance to make progress in the adoption of the relevant legislation. In this regard, the Committee noted that the Office carried out such a mission in March 2002, and that the report of the mission was reflected in the Committee of Experts' observation. The Committee took note of the positive but very slow progress, including institutional measures against discrimination.**

**The Committee welcomed the continuing positive trend in the level of women's participation in education and training, and the measures taken to promote women's participation in the labour market, as well as the growing cooperation with the ILO in this regard. It encouraged the Government to continue its efforts to promote gender equality in the labour market and hoped that the Government would soon be in a position to report progress in improving the participation rate of women in economic activities, including among women university graduates.**

**The Committee noted certain legislative changes removing restrictions on women and hoped that the amendment to section 1117 of the Civil Code would be adopted in the near future. Noting that a review of national legislation was under way, the Committee strongly urged the Government to address, as a matter of priority, the important issues of the obligatory dress code for women, which could have a negative effect on the employment of non-Muslim women, and the restriction on women judges issuing verdicts, to which reference had been made over many years, and to bring them into compliance with the Convention. It also requested the Government to supply information on the application of social security laws to women in practice.**

**The Committee also noted the efforts made to promote the application of the Convention with regard to religious and ethnic minorities, including the adoption of a national plan of action and the work of the Islamic Human Rights Commission. The Committee looked forward to receiving full information on the implementation of this plan, while noting that discrimination in law and in practice continued against the Baha'is. The Committee requested the Government to provide detailed information to the Committee of Experts on the measures taken to address these important issues, including on the points raised by the Worker members of the Committee, and statistical data on the participation in private and public sector employment of women and men, and of members of minority groups in general, including ethnic minorities and non-rec-**

**ognized religious minorities. It hopes that the Government would give consideration to launching of an awareness campaign for these minorities. The Committee expressed the firm hope that it would be able to note progress with regard to the remaining restrictions imposed on women in the very near future. It encouraged the Government to continue to request the support and technical assistance of the ILO to resolve these substantial issues preventing the full application of the Convention in law and practice.**

**Convention No. 118: Equality of Treatment (Social Security), 1962**

***Libyan Arab Jamahiriya*** (ratification: 1975). **A Government representative** indicated that Social Security Act No. 13 of 1980 which is applied in the Libyan Arab Jamahiriya was one of the most advanced laws because it included many monetary and in-kind benefits. He added that the Act was promulgated after detailed examination, in collaboration with the Office, which provided technical assistance. He pointed out that the regulations that were issued to put it to effect were based on equality of treatment and non-discrimination between Libyan citizens and foreigners. He highlighted that that the Social Security Act did not contain any kind of discrimination. Section 31 thereof specified the categories of persons covered by social security schemes: partners in undertakings; public officials; workers employed with labour contracts; self-employed workers; and other categories. The same section specified that in the Libyan Arab Jamahiriya, non-national residents benefited from social security schemes within the conditions set down in the regulations, and in accordance with international Conventions. While section 6 of the Regulations on Registration, Contributions and Inspection defined workers with labour contracts as workers who are employed with others by virtue of a written or oral employment contract in return for wages or a salary paid in cash or in kind, be it in productive or non-productive tasks, be it a national or non-national worker, regardless of the workplace, public or private in accordance with the provisions specified in these regulations and the provisions of international Conventions.

He stated that the Libyan Arab Jamahiriya had previously replied to the observation made by the Committee of Experts. However, he believed that there was some difference in views in the interpretation of the provisions of Convention No. 118 and the Social Security Act and the Regulations that put it to effect. He highlighted the following points:

– Section 38(b) of the Social Security Act No. 13 of 1980 covered non-nationals whose service or work is terminated for reasons other than the reasons referred to in sections 13, 14, 17 and 18. In other words, employment or service was ended not on account of reaching the legal age for pension entitlement, nor on account of an occupational injury leading to partial invalidity; in which case, the worker was entitled to a full pension. Nor did it involve an incapacity to earn as a result of an occupational accident, for which the worker is entitled to a partial pension. This did not entail the termination of employment or service as a result of a continuous total and permanent invalidity (60 per cent or more) resulting from bad health, disease, or accident other than an occupational accident for which the worker is entitled to a pension, as specified by the Act and Regulations. In other words, if the service of a non-national ends naturally, that is, at the end of the employment contract, and if it were not renewed, he was not entitled to a pension, in accordance with the abovementioned sections. In such a case, the non-national would obtain a lump sum for the period of employment or service unless it was calculated within the overall pensionable period regulated by the social security Conventions concluded between the Libyan Arab Jamahiriya, and the country of origin of the non-national.
– Section 38(a) and (b): (a) related to nationals and (b) related to non-nationals. Both had the same formulation except in the case of a national who was not entitled to a pension if the period of employment or service was terminated, the State was obliged to grant him a pension until he obtained another job. This applied to the majority of countries, in which unemployment benefits were granted for their citizens.

As for non-nationals, if the employment or service was terminated, and if the worker was not entitled to any pension, the worker would return to his country after having obtained a lump sum as indicated in the regulations, provided that this period was not accounted in the periods regulated by the social security schemes, concluded between the Libyan Arab Jamahiriya and the country of origin of the insured worker. The speaker was of the view that there was no discrimination in the above section for workers who work with an employment contract in a country other than his own, when a worker's work was ended, and when he was not entitled to any kind of pension. He stated that the State could not pay pensions to non-nationals if the duration of their employment was ended because they had to return, in accordance with the Act, after obtaining their rights. If a worker returned to work or obtained another job and if he were not entitled to a pension but to lump sum benefits, the duration of his previous employment would be counted in the overall pension entitlement, as set down in section 15 of the Act.

With regard to the second comment made by the Committee of Experts on section 5(c) of the Regulations on Registration, Contributions and Inspection (this was not the Social Security Act as mentioned in the observation made by the Committee of Experts) which indicated that the schemes of registration and contributions should apply to non-national employees who were residents in the Libyan Arab Jamahiriya, and who were beneficiaries of the provisions of social security on the condition that they give their consent or if there was an agreement with their countries of origin. Those employees were public employees with contracts of a specific duration and were not workers. They were also covered by medical care provided by the State, and were beneficiaries of end-of-service allowances besides housing and furniture. It was for that reason that the regulations gave them the possibility of benefiting from the social security scheme if they so wished or if there were an agreement with the countries. In the majority of cases, their employment would be concluded through their governments within the context of bilateral cooperation. With regard to other workers, they were compulsorily affiliated to the social security scheme.

With regard to section 8(b) of the Regulations on Registration, Contributions and Inspections (this was not the Social Security Act as mentioned in the observation of the Committee of Experts), this paragraph dealt with self-employed workers, who were residents in the Libyan Arab Jamahiriya, and who were non-nationals. The paragraph specified that the worker could benefit from the social security schemes on his or her consent or if there were an agreement with the country of origin. This was an advantage granted to this category of self-employed workers because the residence of the worker himself could be for a short duration in the Jamahiriya, or he could be a contributor to another social security system, or insurance in his country of origin, or in another country. The speaker considered this advantage as a freedom of choice, and not as an obligation.

With respect to section 16 (2) and (3) of the Regulations on Social Security Pensions, these specified the entitlement to a pension, and provided that non-national contributors were not entitled to a pension unless they spent ten years in employment or service after 1 June 1981, the date of entry into force of the Social Security Act whilst fulfilling all the other entitlement conditions specified in Act No. 13 of 1980. Consequently, if the ten-year period was not fulfilled, the contributor was entitled to a lump sum as set forth in the abovementioned Regulations. The speaker added that section 16, paragraph 3, was supplementary. Since 1 June 1981, if a non-national contributor wished to have a previous period be accounted in the social security scheme, he had to have contributed to the said social security scheme in order to be entitled to a pension. The total of the two contribution periods should not be less than ten years; in other words, the contribution period within the social security scheme should be added to the duration of employment, in such a manner that the total would amount to at least ten years, for an entitlement to a pension benefit. He further indicated that section 95(3) of the same Regulations included the above condition with respect to the entitlement to a total invalidity benefit for non-occupational accidents. If that condition was not met, non-national contributors would be entitled to a lump sum specified in the same Regulations.

He reverted to section 174(1) and (2) of the Pensions Regulations which provided for pensions of non-nationals in the case of an occupational accident or disease, in which case they were entitled to a pension and other benefits related to occupational injuries. Workers' dependants also were entitled in the case of death as a result of an occupational accident or disease. In such a case, the condition of the ten-year period would not be applicable. He highlighted that the periods relating to pension entitlements or benefits were not determined haphazardly, but were decided on in accordance with technical studies. He pointed out that such texts were not in conflict with Convention No. 118. He recalled the last comment of the Committee of Experts on Regulation 161 of the Pension Regulations, which provided that pensions or other monetary benefits might be transferred to beneficiaries resident abroad subject, where appropriate, to any agreements to which the Libyan Arab Jamahiriya was a party, and in respect of the principle of reciprocity. He underlined that section 161 authorized the transfer of pensions of all types as well as monetary benefits to beneficiaries resident abroad, whilst taking into account the observance of conventions and international agreements to which the Libyan Arab Jamahiriya is a party. It also takes into account the principle of reciprocity con-

tained in other international Conventions. This principle of reciprocity excludes by virtue of Article 10(1) of Convention No. 118 refugees and stateless persons. He indicated that this issue required a detailed examination of Convention No. 118 itself and of section 161 of the Pensions Regulations. The results of this study would be implemented as soon as they are issued.

He commented that the last paragraph of the comments of the Committee of Experts on Convention No. 118 and relating to the strict application of Article 5 was of paramount importance especially in the light of the mass expulsions which had taken place of foreign workers from the national territory. He stated that that paragraph did not fall within the competence of the Committee of Experts and that the Libyan Arab Jamahiriya had already replied to observations made in the past by the Experts on Convention No. 118. He considered it out of place because of its provocative style, which fell outside the scope of the issue under discussion, especially in the light of the fact that this issue was raised, and the discussion thereon was ended. He indicated in this regard that there was no reason for its inclusion in the report of the Committee of Experts.

He pointed out that the Libyan Arab Jamahiriya had previously requested ILO technical assistance, in light of the observation of the Committee of Experts, and which consisted of the dispatch of an expert of the multidisciplinary teams from the Standards Department to assist in the examination of the reports relating to the Conventions and the comments of the Committee of Experts, and the training of some of the national officials in the preparation of the reports. He underlined in that connection that the Libyan Arab Jamahiriya had not had any technical assistance programmes with the ILO for numerous years.

**The Employer members** stated that it was entirely clear why the Committee of Experts had asked the country to report to the Conference Committee, as this was an extreme case involving a refusal on the part of the Government to communicate over a period of ten years. The Government, in 2001, had sent the same information as it already had in 1995 and 1997, without any addition. The Libyan Arab Jamahiriya also appeared in paragraphs 89, 100, and 104 of the General Report. The Committee of Experts commented on several legal provisions resulting in unequal treatment of Libyan citizens and foreigners in contravention of the Convention, such as in the context of premature termination of work, the voluntary coverage in the social security scheme of foreigners in public employment, the requirement of ten years of contributions to receive an old-age pension and restrictions on transferring pensions or other monetary benefits abroad. The provisions establishing these inequalities were all very important, having in mind the great number of foreign nationals working in the country. The Employer members wondered why, if the national legislation was different as described by the Committee of Experts, the Government had never reported its views to the ILO. It was impossible to remain silent for such a long time and then to come forward suggesting that the Committee of Experts were unable to read the laws. The Government was strongly urged to submit a report to the Committee of Experts and to repeal all provisions which were contrary to the Convention.

**The Worker members** recalled that the Libyan Arab Jamahiriya, which had ratified the Convention 28 years ago, had been accused for many years of serious discrepancies between the Convention and national law. Although this case had been taken up in June 1999, the Committee of Experts noted the persistence of difference in treatment in matters of social security between Libyan nationals and foreign workers. A direct contacts mission in 1999 and further observations had had no effect. The national social security system continued to treat Libyan nationals and foreign workers differently. Social Security Act No. 13 of 1980 provided foreign workers with only a lump sum in case of premature termination of work, whereas nationals were guaranteed maintenance of their wages. The Government explained that the period during which contributions had been paid was considered to be a qualifying period only if there was a reciprocal social security agreement between the Libyan Arab Jamahiriya and the State of which the worker was a national. Otherwise the worker was only entitled to a lump sum due to the fact that his work permit was linked to his or her contract of employment, which the Worker members considered to constitute an indisputable element of discrimination. The Libyan social security system was also discriminatory as regards the affiliation of foreign workers to the social security system on a voluntary basis. The difference in treatment led to a series of injustices with respect to benefits. By means of various devices, the Government of the Libyan Arab Jamahiriya has been avoiding its obligation to extend old-age benefits to a large number of foreign workers. Furthermore, the Pensions Regulation of 1981, by providing for payment of benefits to beneficiaries residing abroad only if there was a reciprocal agreement between the Libyan Arab Jamahiriya and the beneficiary's country, established a discriminatory system which was totally contrary to the Convention. In light of the thousands of foreign workers who had been expelled from the country, the Worker members were convinced that Libyan legislation in matters of social security were deliberately designed to cheat foreign nationals of their rights guaranteed under Article 5 of Convention No. 118.

Therefore the Worker members requested that this legislation be immediately amended to bring it into compliance with the Convention, to ensure that the Libyan Arab Jamahiriya provided both its nationals and nationals of other member States, which had accepted the obligations arising from the Convention in the given sector concerned, as well as refugees and stateless persons, when residing abroad, the payment of invalidity benefits, old-age benefits, survivors' benefits as well as employment injury benefits.

**The Government representative** indicated that the comments he listened to were not related to the explanations given on the condition of the ten-year duration which was not applicable in the case of an occupational accident or disease. That was a condition in an employment contract like any other law, such as the Staff Regulations of the International Labour Office.

With regard to the status of refugees and stateless persons, he reiterated the Government's intention to examine the issue because of the difficulties of defining the term "stateless". He also rejected the allegation that there was any discrimination between nationals and non-nationals because many foreigners, such as Africans and Arabs, could enter the Libyan Arab Jamahiriya without a visa. He stated that his country was ready to welcome any expert from the ILO to visit the Libyan Arab Jamahiriya and to discuss the details of application of Convention No. 118.

**The Committee took note of the statements made by the Government representative as well as the discussion that followed. The Committee regretted to note that despite the severe terms of its conclusions formulated on this case in 1992 and 1999, and the assurances offered by the Government on these occasions, the Government had still not given any indications that it had adopted any particular measures since 1992. It was the opinion of the Committee that the verbal explanations presented by the Government representative during the discussions did not reflect the Government's intention to modify the legislation in accordance with the requirements of the Convention. In these circumstances, it was important to recall that, although the Government's intention to maintain a fruitful dialogue with the supervisory bodies was imperative, it still had the obligation to comply with the obligations resulting from a ratified Convention. The Committee expressed the hope that, on the basis of the assurances offered by the Government representative, the Government would soon re-initiate a substantive dialogue. It urged the Government, once again, to adopt specific and concrete measures with a view to achieving full conformity of the legislation with the provisions of the Convention, ensuring as such full observance of the principles of equality of treatment in the area of social security. It also requested the Government to provide a detailed report to the Committee of Experts at its next session in November-December 2003. The Committee expressed the firm hope that the Government would accept the technical cooperation offered by the ILO in order to solve the problems. The conclusions will be included in a special paragraph of the General Report.**

**The Employer members, supported by the Worker members,** agreed with the conclusions of the Committee in this case and requested that they be placed in a special paragraph of its report.

### Convention No. 122: Employment Policy, 1964

***Portugal*** (ratification: 1981). **A Government representative** stated that he would tackle the different issues raised by the Committee of Experts and provide some indications on recent trends in the labour market. In the first quarter of 2002 and the first quarter of 2003, the active population had grown at a rate of 1.2 per cent, while the activity rates had remained practically constant and the unemployment rates had decreased slightly (0.01 per cent). In the first quarter of 2003, the unemployment rate had been 6.4 per cent with an increase in the number of unemployed workers of 45.6 per cent. In his opinion, youth unemployment and unemployment of older workers had increased less than the overall average. This trend resulted from a slowdown in economic activity, with the slowdown itself being related to the international economic policy and the national economic situation of reducing budget deficits and monitoring public expenditure. Moreover, it had to be kept in mind that, because of the country's integration in the European common market, the national employment policy had followed the guidelines established at the level of the Community to formulate national employment plans. It should also be noted that the average unemployment rate (in the first quarter, according to Eurostat), was 8.2 per cent in the EU and 7 per cent in Portugal.

Concerning the rise in the use of temporary contracts, the latter corresponded to 17.1 per cent of the total of contracts. This rate rose to 15.5 per cent for men and to 18.9 per cent for women. In this period of economic slowdown, employment mainly adjusted itself to the use of fixed-term contracts. With regard to the impact of the measures taken within the framework of the national employment plan on the quality of employment, social protection, increased productivity and competitiveness, the fight against illegal employment and the use of fixed-term contracts, the formulation of a programme to combat occupational risks, the speaker wished to mention the adoption of a new basic law on social security and the approval of the first Labour Code of Portugal which revised and systematized the legislation in force. The Code had been approved by Parliament and was to be signed by the President of the Republic who had requested the Constitutional Court to examine the constitutionality of certain sections of the Code. Concerning the fight against illegal unemployment, certain independent workers sometimes found themselves in a situation of dependency or subcontracting. In this regard, the Labour Code presumed, on the basis of certain factual elements, the existence of a labour contract. In addition, the Government supplied information on the fight against illegal immigration in the context of its report this year under article 19 of the Constitution. Regarding the use of fixed-term contracts, the Labour Code contained provisions aimed at restricting the conclusion and renewal of such contracts. In addition, the social security contributions by employers could be increased based on the number of fixed-term contracts concluded in their enterprise. If these contracts were concluded for more than six months, the employer had to provide vocational training for the worker. Finally, enterprises that converted fixed-term contracts into open-ended contracts could be encouraged by means of a reduction in their social expenses.

The Government representative further mentioned that the Committee of Experts had requested information on the manner in which the representatives of all groups concerned, including rural and informal economy workers, had been consulted on the formulation and the implementation of employment policies and programmes – which was mainly the National Employment Plan. He stated that, in particular with respect to rural and informal economy workers, the latter were represented by the trade union confederations cited by the Committee of Experts. Informal economy workers enjoyed the same rights as other workers and could set up trade unions or become members of an existing trade union. Generally, the consultation with the social partners took place within the Permanent Commission on Social Consultation, which is a tripartite body, and in the framework of which quarterly reports on the implementation of the Plan were being presented and discussed. There existed also a tripartite working group that provided technical support to the formulation of the national plan. Furthermore, laws dealing with employment policy were initially submitted for examination by representative workers' and employers' organizations.

The speaker further referred to the comments made by General Workers' Union (UGT) regarding the difficulty for young jobseekers entering the labour market. This difficulty resulted from a mismatch between the offer proposed by the system of higher education as a whole and the needs of the labour market. Information on this point was available to young jobseekers so that they could orient themselves towards higher skills training sought by the labour market. With respect to the problems of regional differences in employment mentioned by the UGT, some public investment existed to stimulate economic activity in those regions where unemployment was highest. In addition, regional plans that were adapting the national strategies to the characteristics of each region complemented the National Employment Plan. With regard to the training of less skilled youth, those of less than 18 years of age must follow a vocational training course during working time. This was the same for less skilled youth of 16 and 17 years of age who had not completed compulsory schooling and who, if necessary, could follow courses equivalent to compulsory schooling. There also existed vocational guidance services to assist youth in choosing vocational training courses. Finally, it was likely that the duration of compulsory schooling would pass from nine to 12 years, which would considerably improve the basic training of youth. A tenth year of schooling was established focussed on professional training, aimed at youth who completed compulsory schooling but did not pursue further studies.

The speaker stated that the UGT had rightly drawn the attention to the situation of older workers who had no access to retraining and who were more exposed to long-term unemployment. Recent figures showed however that older workers had not been affected by the increase in unemployment. The training possibilities of these workers depended in particular on their capacity to learn and many of them had not completed their compulsory schooling. In this context, to respond to the recent rise in unemployment, the Employment and Social Protection Programme envisaged measures aimed at facilitating the transition of these workers into retirement, if they wished to do so. The Programme envisaged a set of supportive measures to provide training accessible to all workers and the unemployed, independent of their age. Some of these measures were particularly interesting for older workers. Finally, with respect to lifelong learning and access to training for all workers, the Government was preparing a law on the basis of vocational training that would regulate the aspects of lifelong learning. The Employment and Social Protection Programme envisaged other training measures to address the current economic situation of increased unemployment, and the new Labour Code embodied the principle that employers have to ensure the vocational training of their workers.

In reference to the observations made by the Confederation of Portuguese Workers (CGTP-IN) regarding the decline in employment in various sectors of the economy and the sex-based discrimination in certain sectors, the speaker confirmed that there had been a reduction in the agricultural and industrial activities to the benefit of the services sector. The exit of economically active older workers could benefit the transformation of rural businesses and raise productivity in this sector. The reduction in the number of industrial workers could be explained by a number of elements such as: the technological transformation of labour-intensive activities; the substitution of less skilled jobs by higher skilled ones; the restructuring of enterprises, especially through outsourcing, which altered the statistical classifications of certain posts that moved from industry to services; and the relocation of industrial enterprises abroad where wages are lower.

The speaker concluded by emphasizing that he had tried to synthesize his comments on all the issues covered by the Committee of Experts. It was therefore perhaps desirable that, when an observation of the Committee of Experts covered numerous points, this Committee would inform governments of the reasons that had motivated the Committee in selecting the case, or at least of the topics on which governments had to provide explanations.

**The Employer members** thanked the Government representative of Portugal for his statement which provided explanations and some statistics concerning the employment policy situation in the country. The statement gave a good and balanced picture of what the Government was trying to do by way of meeting the objectives of the Convention. They recalled that Article 1 of the Convention set the goal of pursuing an active policy designed to promote full, productive and freely chosen employment, ensuring for each worker the fullest possible opportunity to qualify for such employment irrespective of race, colour, sex, religion, political opinion, national extraction or social origin with the view to stimulating economic growth and development, raising the standards of living, meeting manpower requirements and overcoming unemployment and underemployment. The Government's statement seemed to cover the efforts under way, based on the national conditions prevailing in the country, and describing the elements of national policy and that of private investment. They recalled that this Convention was a promotional one with flexibility of application but that, in the end, the measure of things was the final result at the workplace. They noted the information provided by the Government, including those regarding the increase of the female workforce which they considered to be substantial in the context of the current worldwide economic situation. They noted the relatively high unemployment figures when compared to the region. They noted the points raised by the Government representative concerning short-term, fixed-term, temporary employment and felt that all this was relative. What might be considered short in one country could be normal in others. They also noted the consultative process concerning the informal sector. They considered the Government should continue its efforts in maximizing skills, pursuing lifelong learning and human resources development in general. They shared the Government's point concerning the Committee's criteria in choosing items for individual cases for discussion. The Committee of Experts' comments in this case were rather short and cryptic. They felt that this was a case where the Government was headed in the right direction.

**The Worker members** welcomed the efforts made by the Government of Portugal to provide all the information requested by the Committee in 2001. The case of Portugal seemed to be a good example of the problems with which many European countries were being confronted. On the one hand, these related to the increase in unemployment and a growing precariousness of workers and, on the other hand, to the absurd demands of the monetary and budgetary aspects of European economic policy. In this regard, Portugal appeared to be particularly affected by the policy aimed at reducing the budgetary deficit (less than 3 per cent of the BNP). The Worker members further emphasized the particular characteristic of unem-

ployment in Portugal in that it had increased more rapidly than elsewhere in Europe and, paradoxically, had affected skilled young people. This was not only related to the economic situation but also to Portugal's economic structure (low-skilled jobs and relatively low salaries). In these circumstances, Portugal was subjected to a triple effect of a difficult economic situation, restrictive budgetary policies and industrial restructuring. Nevertheless, the Worker members were satisfied with the participation of the social partners in the discussions on employment. In this regard, an agreement had been signed on 1 February 2001 to improve training and to combat precarious employment, in particular, by means of tackling illegal employment and monitoring reliance on temporary contracts. However, the fact still remained that the implementation of these employment agreements was a major problem. The Worker members, therefore, requested that the Government focus its efforts on the problem of increasing unemployment, including that of skilled young people, by ensuring the implementation of these agreements, and that it keep them informed of the measures taken to this end.

**The Worker member of Portugal** stated that, although there was no problem with the tripartite dialogue in his country, the main difficulty was the concrete implementation in practice of the agreements negotiated through this dialogue. Unemployment in Portugal resulted, on the one side, from the model of development pursued by the authorities, which was based mostly on the labour intensive sectors and, on the other side, from the policy of budget stabilization leading the Government to use such criteria for the reduction of the deficit and of the public debt that have a negative impact on employment. Such unemployment had several characteristics. It had increased at an alarming speed, from 4.5 per cent in June 2002 to 7.3 per cent in May 2003. It is now confronted with the problem of the qualification of the unemployed and had become, under the circumstances, a preoccupying structural question.

The Labour Code adopted by the National Assembly had disrupted the balance of force between employers and workers. Promulgation of this Code could in future lead to new increases in unemployment and make the social dialogue and collective bargaining more difficult, inasmuch as the employers, being in a stronger position, would be less inclined to negotiate with the workers. The adoption of the Code by the National Assembly was an extremely controversial process that led to a general strike in December 2002 and forced the President of the Republic to submit some of its provisions to the Constitutional Tribunal. In conclusion, Portuguese workers were deeply worried by the progression of unemployment and demanded an active employment policy with more vocational training programmes, and the adoption of measures to realize concluded tripartite agreements. Furthermore, the promulgation of the new Code by the President of the Republic might have preoccupying repercussions on the quality of employment, qualification of workers, national productivity and tripartite dialogue.

**The Worker member of Senegal** considered that the reply provided by the Government representative of Portugal had not addressed all the concerns. He pointed out that the reliance on temporary work had taken disturbing proportions and that the level of employment had indeed decreased in the agricultural and industrial sectors. He stressed the role of the social partners with regard to the development of new legislation in the area of employment promotion, including the workers in the rural sector and the informal economy. The speaker further invoked the persistent structural problems in employment and training, in particular the unemployment of skilled young people and the inadequate training possibilities offered to less skilled youth. He denounced the gap between the regions and persistence of sex discrimination and expected measures to be taken on the part of the Government to ensure compatibility between vocational skills and the number of jobs available so as to achieve real progress and to respond to a social need.

**The Worker member of Austria** recalled the Preamble and Article 1 of Convention No. 122, as well as the obligation of States that ratify this Convention to design and apply an active employment policy towards the goal of full employment according to national circumstances. This would also include the examination of related economic and financial policies. The deterioration of the employment situation in Portugal reflected a European-wide trend that was not only due to a failed employment policy in Portugal but also due to macroeconomic conditions at the European Union level which hindered economic growth. The European Union pact on growth and stability created neither growth nor stability and had negative effects on the employment objectives outlined in Convention No. 122. He further noted the increasing practice by Portugal and other European governments to exclude workers' organizations from the process of formulation, implementation and analysis of national employment policies as required by Article 3 of Convention No. 122. The social costs of a failed employment policy were being borne by those who were not present in the Governments of these countries. With regard to the conclusions in this case, he requested the Committee to recommend to the Government of Portugal to use all available resources for a proactive employment policy to be designed in consultation with workers' organizations and to use its influence at the European level to fundamentally change the macroeconomic policy of the European Union towards sustainable employment-intensive economic growth.

**The Government member of France** emphasized that Portugal was a very active partner within the framework of the European employment strategy conducted by the European Union. This strategy gave a very prominent place to questions of employment, education and training, as well as to the relations between competence and competitiveness, and it was Portugal that had pushed and supported this orientation. Without entering into the substance of the questions and discussions to be dealt with by the social partners and the Government, it is worth remembering that Portugal is known as a partner, which is very sensitive to and very engaged in the questions of employment and training and in giving these issues a noticeable place.

**The Government representative** indicated that, with respect to the concerns expressed by the Worker members regarding his speaking time, he had tried as much as possible synthesize his intervention which covered many different areas. Moreover, the whole of the comments formulated by the Workers raised an objective difficulty to the extent that they required another long and complete intervention on the prevailing economic, social and budgetary policies. Three points merited however to be emphasized. Firstly, while there was agreement on the facts, there were divergences on their evaluation as well as on future perspectives and the determination of objectives resulting from this evaluation. This would not be an easy task. The Portuguese economy relies on activities that are labour intensive and it was necessary to modify this economic model, to focus on young workers and to ensure redeployment of older workers. There were also some divergences as to the impact of the future Labour Code on the economy and social relations. The different aspects of the application of this new Code will be the subject of subsequent comments in the context of future reports that will be submitted by the Government. Finally, the Government accords great importance to the definition and the conclusion of agreements as well as to seek solutions for their practical application – the implementation of these agreements being indeed more difficult than their conclusion. Regarding the employment policy agreements concluded in 2002, there were objective elements that required a new examination of priorities, taking into account the recent elections. If there had been a delay with respect to certain decisions, certain aspects had nevertheless been implemented.

While recognizing the importance of the strategic process by Portugal, **the Worker members** did specify that this process was developed during a period with a perspective of economic growth. The present situation no longer corresponded to the expectations of the year 2000. They reiterated their conclusions concerning the implementation of the agreements and their request for information on the measures taken.

**The Employer members** referred to the questions raised during the Committee discussion on this case and commented on two aspects. They observed that the obligation of the Government of Portugal to design macroeconomic policies in line with agreements of the EU agreements or the Lisbon Agreement was not covered by Convention No. 122. Moreover, the Committee of Experts did not give value to these policies in its observation. With regard to the principal objective of Convention No. 122, they stated that it was necessary to focus on the creation of employment opportunities and to analyse the factors that promoted or hindered employment. They noted that this priority was sometimes not clearly recognized. They recalled that policies implementing promotional Conventions such as Convention No. 122 often covered many different policy fields. The assessment of a single part of this policy package could hardly be made without prior in-depth analysis of all the related aspects.

**The Committee took note of the detailed information provided by the Government representative and of the discussions that followed. The Committee recalled that this case concerned a priority Convention which required, in consultation with the social partners, the formulation and adoption, within the framework of a coordinated economic and social policy, of an employment policy designed to promote full, productive and freely chosen employment. The Committee noted that the Government was presently carrying out an employment policy within the framework of the European Employment Strategy and was proceeding to a regular revision of its National Plan on Employment. The Committee trusted that the Government would continue to communicate its reply on the mat-**

**ters raised by the Committee of Experts and that it would include information in its reports on the result of the tripartite consultation and on the other measures taken to achieve the important objectives set by this priority Convention.**

**Convention No. 131: Minimum Wage Fixing, 1970**

***Uruguay*** (ratification: 1977). **A Government representative** thanked the Committee for the possibility to present up-dated information on the application of the Minimum Wage Fixing Convention, 1970 (No. 131). She considered that a literal reading of Article 3 of the Convention would lead to the conclusion that it was being adequately applied by the Government in view of the national conditions. Even if one assumes that the conditional character of the phrase used in the instrument ("shall, so far as possible") allows ratifying states to exempt themselves from these provisions, it was not the intention of the Government to deviate from the guidelines set forth in the international standard. The Government of Uruguay also complied with Article 4 of the Convention, as the minimum national wage was fixed and adjusted periodically every four months. Uruguay was experiencing the most serious economic and financial crisis in its history due to the same causes that have led to the destabilization of the economic policy in the whole region. Nevertheless, as the Government had indicated in its previous reports, it remained true that the national minimum wage was being fixed by the Executive not as a reference amount for the payment of wages, but as a criteria for the calculation of all the benefits provided by the social security system, such as old-age and other pensions, family allowances and insurance payments for sickness, accidents and unemployment. In this sense, the real wages received by the workers were in their large majority higher than the national minimum wage. She strongly repudiated the view that all those whose salary was not negotiated collectively were receiving minimum wages, and referred to the official statistics in this respect.

According to the continuous monitoring of households in 2002, the average salary in Uruguay amounted to 8,500 pesos, which was 8 times higher than the national minimum wage fixed at the level of 1,170 pesos per month. The data collected by the Social Providence Bank in 2002 showed that the average salary of contributors amounted to 5,896 pesos (5 times higher than the minimum wage) in the private sector and to 8,329 pesos (8 times higher) in the public sector. The beneficiaries of the state funds for the military and police personnel, as well as members of the parastatal social security institutions, such as university professors, banking employees and notaries had incomes much higher than the national minimum wage. The statistical information showed that the figures advanced by the Uruguayan trade unions and noted by the Committee of Experts were not exact. Out of the total of approximately 3 million residents and 780,000 wage earners, it was incorrect to state that 875,000 employees and their dependants received the equivalent of the national minimum wage. Furthermore, in addition to their salaries, Uruguayan workers received family allowances equivalent to 16 per cent of the national minimum wage, as well as food allowances which constituted a high percentage of public expenses. Together with these measures, the Government had implemented a plan for contracts for transitory occupation in cases of critical social situations and employment in various services with the payment of the average monthly salary at the minimum level for 17 workdays of 6 work-hours per day.

With regard to consultations with the social partners, the Government representative indicated that, notwithstanding the fact that the national minimum wage was fixed by the administrative decision, the informal contacts and permanent relations with the social partners could surely not escape the attention of the Committee when assessing the reality in the country. Tripartism had a long history in Uruguay. Already in 1943 the country had established the mechanism for wage fixing by sector of activity on a tripartite basis. Now, there were numerous institutions providing for the tripartite participation including the National Employment Council, the Social and Labour Commission of MERCOSUR, the National Council in Occupational Safety and Health, the Tripartite Commission on Equality of Opportunities, the tripartite Commission for the application of Convention No. 144, and the Social Providence Bank.

Consultations and relations between the Government and the social partners were continuous, cordial and respectful of the differences of opinion which naturally emerged on the various aspects of the national policies. In 1995, when the Government was experiencing the effects of the opening up of the economy on labour relations, it created a tripartite framework to seek consensus in regulating collective bargaining. Regretfully, nearly four years of meetings had not brought much result. Had they been more effective, it would have been possible to set up a new tripartite committee for the purpose of fixing the wages of workers who were not covered by collective agreements. The difficult economic and financial situation which the country was passing through required enormous efforts of all social partners. In recent years, new collective agreements had been concluded at the level of the sector of activity, trade unions became more representative and were able to conclude long-term agreements, adjusting themselves to economic realities. As regards legislative initiatives, the Ministry of Labour and Social Security had put forward proposals for draft laws and various initiatives for the protection of wages, reform of the unemployment insurance and modification of the hours of work. The draft concerning the protection of wages had been submitted in consultation with the PIT-CNT, which had, inter alia, asked for inclusion in the text of an article providing for the direct discount of trade union contributions. The draft concerning the modification of the hours of work will be submitted shortly for consideration in consultation with the social sectors.

**The Worker members,** following the comments made by the Committee of Experts, recalled that wage fixing had passed from the level of tripartite consultation by sector of economic activity to wage fixing at the enterprise level, which contributed to the weakening of collective bargaining in this country. It should also be noted that the minimum wage was set in a unilateral manner by decrees and did not correspond to the social realities in the country. This practice was, in fact, one of the factors explaining the increased poverty in Uruguay. The practices were disturbing, and measures aimed at guaranteeing a macroeconomic balance should not be incompatible with minimum wage fixing through social dialogue and collective bargaining. The absence of consultations with trade union organizations, the weakening of collective bargaining and unilateral minimum wage fixing were elements that undermined the application of Convention No. 131. This was why technical assistance by the ILO would be of extreme importance. With respect to pressure of the regional integration of MERCOSUR at the legal level in Uruguay, also mentioned by the Government, the Worker members favoured the strengthening of social dialogue and consultations with the workers. In particular, it was suggested that the states concerned should strengthen the consultative economic and social forum of MERCOSUR.

**The Employer members** stated that the discussions on this case centred around two issues: the criteria and the procedure for establishing a minimum wage. As regards the criteria, they noted that the Government of Uruguay had indicated the need for greater competitiveness and for the aligning of prices with those of its main partners in MERCOSUR. There were, of course, other criteria to be taken into consideration but the problem remained the specific minimum wage itself. Such criteria were not so much legal terms requiring further interpretation; they were rather factors which had to be reconciled. They understood the dissatisfaction of the Worker members with the minimum wage set in reality. However, it was not up to the Committee of Experts nor this Committee to consider or judge a specific minimum wage or to set or even to fix it. As regards the procedure for fixing a minimum wage, they noted the that they were set unilaterally as indicated in the observation of the Committee. The question was the relationship between the setting of a minimum wage by law and by collective agreement, especially at the enterprise level. It seemed that differentiated solutions were needed. In any case, representative organizations of employers and workers needed to be consulted. They noted the statement of the Government representative of Uruguay indicating that these organizations did not exist for all sectors and branches of economic activity. Moreover, there seemed to be differences of opinion as to which organizations were representative and thus should be consulted. With reference to the comment of the Committee of Experts regarding existing organizations which could be consulted, they reminded this Committee that it was certainly a question of the constitution of these organizations as to whether they also had the authority to engage in consultations. They supported the request of the Committee of Experts regarding the need for information on collective agreements that fixed wages for specific sectors and branches of economic activity, as indicated in paragraph 9 of the observation. They finally noted that a specific minimum wage could not be fixed or recommended by the Committee of Experts or this Committee, but technical problems in the procedure for fixing a minimum wage could be solved through technical assistance provided by the Office.

**The Worker member of Uruguay** stated that the information provided by the Government representative did not contribute at all to the debate on minimum wages. The average wages referred to by the Government did not permit them to see what the actual value of the lowest wage used to carry out the calculations was. Moreover, none of the tripartite bodies mentioned in the Government's statement had discussed the fixing of minimum wages. In relation to Articles 3 and 4 of Convention No. 131, reference was made to the

observation of the Committee of Experts regarding "the elements to be considered in fixing and adjusting the minimum wage rates". The situation, already deplored by the PIT-CNT, continued to worsen. It continued without taking into account the criteria set in Article 3 of the Minimum Wage Fixing Convention, 1970 (No. 131). Historically, according to Act No. 10449 of 12 November 1943, minimum wages were set through negotiation in tripartite committees, by category of work and branch of economic activity. These wage councils had not been convened by the Executive since 1990, except in the health, transportation, construction and banking sectors - sectors which the Government considered to be key from a macroeconomic point of view. By failing to call upon the wage councils to fix the minimum wage, the Government had left wage fixing in the hands of the market.

The group of workers, whose working conditions – including the minimum wage – were being regulated through collective bargaining, had been dramatically reduced from 95 per cent in 1986 to 16 per cent in 2002. Overall, this had led to a situation where real national minimum wages in the private sector were set administratively by the Executive. The absurd result of this minimum wage-fixing policy was that the minimum wage fixed ended up being a very small amount which was equivalent to US$ 36 per month, while the basket of basic products for a family of three cost the equivalent of US$ 824. Real wages in the private sector decreased by 5.7 per cent between July 2001 and July 2002. The level of today's real wages was similar to that of December 1984. This was the result of the implementation of a minimum wage-fixing machinery in the absence of consultation as part of an economic policy that was using wages as a variable for adjustment. What the Government had stated in its reply to the Committee of Experts was incorrect. It had stated that "there was no one ready to work for such a low minimum wage". Yet, the PIT-CNT observed that with almost 20 per cent of the economically active population found itself in a situation of open unemployment and with more than 50 per cent of the economically active population experiencing employment problems (precariousness, underemployment, informal work), it was doubtful that there were no people looking for whatever type of work to avoid the most absolute misery. In respect of direct employment in emergency situations, he indicated that the remuneration offered was the minimum wage plus 25 per cent, which was the equivalent of US$ 45. However, only 0.5 per cent of the unemployed benefited from these plans.

The Worker member further stated that the Government had violated its obligation to consult with the representatives of workers' and employers' organizations concerned in the fixing of minimum wages. The situation had even worsened when, in March 2003, Act No. 17626, which provided that all wage adjustments of all civil servants, without exception, including statutory wages or those determined in collective agreements, would be determined at the same time and according to the percentage of the general adjustments arranged by the executive powers of the central administration, was adopted.

In conclusion, he mentioned that the statement by the Government representative did not help to clarify the case and the Government should explain the formal and substantial aspects of the Convention. It should also be requested to provide a detailed report on the situation next year. He supported the suggestion of technical assistance by the Office in order to promote the application of the Convention, in consultation with the social partners.

**The Government member of Chile** stated that he valued the very detailed presentation of the Government representative of Uruguay. He said that Uruguay distinguished itself by its devotion to tripartism, which should be taken as an example for the rest of the Latin American region. He indicated that in the framework of MERCOSUR, Uruguay had boosted social dialogue and coordination. In his opinion, the problems of collective bargaining referred to by the worker member of Uruguay, even if they related to the subjects debated, did not fall within the scope the Convention No. 131 on minimum wage fixing. He added that the framework of social dialogue should be able to offer solutions to this case.

**The Worker member of Venezuela** declared that the interventions of the worker member of Uruguay and of the Worker members had been very illustrative of the situation in Uruguay. He indicated that attention should be paid to the fact that for 11 years now, this case had been discussed in the Committee. The Committee should request the Government to implement the provisions of the Convention as soon as possible.

**The Government member of Argentina** expressed her appreciation of the very detailed presentation made by the Government of Uruguay, which in her opinion, satisfactorily answered the request of the Committee of Experts. She emphasized their commitment to dialogue and tripartism and referred to efforts by the Government of Uruguay to overcome the profound social and economic crisis that had hit the region. She also highlighted the promotion of the fundamental rights embodied in the Social and Labour Declaration of MERCOSUR.

**The Worker member of Brazil**, as a citizen of a member country of MERCOSUR stated that he was particularly concerned about this case. There was currently a lack of social dialogue in the countries participating in the regional economic integration process. It was extremely serious that the Government, in order to justify the non-observance of its international obligations, used the argument of the need to align prices to those of MERCOSUR partners. Such an extreme argument would lead to a downward spiral of salaries, with every country seeking to lower the wages of its workers in order to render its products more competitive, instead of investing in productivity and technological development. The economic integration process would no longer be a process of development but would ruin the population. Likewise, the argument that maintaining the purchasing power of workers would cause inflation was unacceptable. In this context, the question was raised as to how the United Nations system, while using all possible efforts to ensure the application of Conventions, could prevent other organizations such as the International Monetary Fund from requiring their member States to take measures aimed at limiting the total wage bill; measures that in addition to transferring income from labour into capital, violated manifestly international labour standards. This question was worthwhile reflecting upon.

**The Government representative** was grateful for the constructive interventions made by the Workers, the Employers and the Governments. She declared that the Government would try to give impetus to these topics within MERCOSUR and indicated that her Government, as always, welcomed the offer of technical assistance. She suggested that September 2003 would be an appropriate time since the forthcoming World Congress on Labour Rights would be held then in Montevideo.

**The Employer members** noted the extensive information provided by the Government representative of Uruguay and stated that this information should be supplied in a report to the Office so as to have a clearer picture of the situation. They said that the Committee should thank the Government for its willingness to accept technical assistance from the ILO.

**The Worker members** reiterated the two points in relation to which the Convention had not been applied: (1) the abandonment of minimum wage negotiations by sector of activity in favour of wage negotiation at the enterprise level which resulted in the weakening of collective bargaining; and (2) unilateral minimum wage fixing. They noted with interest that the Government had accepted the technical assistance from the Office and requested the Government to provide the Committee of Experts with information on developments regarding the situation in order to enable it to examine at its next year's session, the progress achieved.

**The Committee noted the oral explanations and detailed statistical information given by the Government representative and took note of the ensuing discussion. It recalled that the case had been discussed in this Committee on two different occasions, most recently in 1998, when the Committee had noted that problems remained in regard to the application, in practice, of the Convention both concerning the criteria of determination of the minimum wage and the prior consultation of employers' and workers' organizations for that purpose. The Committee noted the information regarding the average national wage which was significantly higher than the minimum wage and the tripartite consultations which had taken place with respect to other ratified Conventions. The Committee observed, however, that it had not as yet been possible to set up the tripartite committee for the determination of minimum wages. The Committee noted that the requirement for meaningful consultations with the social partners in determining minimum wage levels, due regard being taken of the basic needs of workers and their families, was the quintessence of Convention No. 131 and that no government could be relieved of its obligations for reasons of economic policy or expediency. The Committee expressed concern about the absence of concrete progress in determining minimum wage levels which kept in line with the economic and social realities of the country and also in consulting the social partners for this purpose in an institutionalized form and on a regular basis. The Committee expected that the Government would give proper consideration to its persistent requests and urged the Government to communicate detailed information to the Committee of Experts for examination at its next session on the measures taken to address these issues. The Committee took note of the Government's interest to draw on the technical assistance of the Office in addressing the questions which hindered the application of the Convention and in promoting social dialogue in this field.**

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

***Kenya*** (ratification: 1979). **A Government representative** stated that his Government had taken careful note of the various comments made by the Committee of Experts and had the following points to raise concerning these comments. The Children Act, 2001, which established safeguards for the rights and welfare of the child, had received Presidential assent in December 2001, six months after the 89th Session of the Conference (June 2001). The primary purpose of this Act was threefold. First, to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. Second, to make provision for the administration of children's institutions. Third, to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. A copy of the Children Act, which had come into effect on 1 March 2002, had been supplied to the Office.

The implementation of truly free and compulsory primary education for all children of school age, with effect from January 2003, was one of the most important developments in the area of protection of children. The new policy on free primary education had been adopted in fulfilment of an electoral commitment made by the new Government elected in December 2002. Under this electoral commitment, the Government had undertaken to completely eliminate all forms of payments, including any hidden levies, that could hinder the enjoyment of free primary education by all children. Consequently, of the 9.2 million school-age children, 7.5 million were currently enrolled, up from 5.9 million before the programme. In short, between January and May 2003, a total of 1.6 million children who would otherwise have been engaged in child labour had now been enrolled in school. The Government was currently engaged in the massive construction of classrooms and the provision of other teaching facilities in order to accommodate the unprecedented large influx of children. In this respect, he acknowledged with appreciation the generous donor assistance received from UNICEF, the European Union, the United Kingdom and the United States.

Another area of progress recorded since January 2003 was the rehabilitation of street children in all urban centres in Kenya. These children, especially between the ages of 16 and 18 years, had been placed into rehabilitation and vocational training centres. The programme was ongoing and already a total of 1,813 former street children had been admitted into the National Youth Service, with others to follow in due course. The Government would continue to update the Office on the implementation of this programme.

With regard to the minimum age for admission to employment, he said that the revision of the country's labour laws, including both the Employment Act (Chapter 226) and the Employment Act (Children) Rules of 1977, was being undertaken by a task force with the assistance of ILO experts in order to bring the legislation into conformity with the various Conventions ratified by Kenya. The task force would complete its work by August 2003. In this framework, the minimum age for employment would remain at 16 years, instead of 15 years as had been initially proposed. In this respect, the Government intended to develop comprehensive legislation which would address the protection of children against all forms of economic exploitation and any work that was likely to be hazardous or to interfere with their development in all economic sectors, in accordance with Convention No. 182, which had also been ratified by Kenya. The task force was working on harmonizing the proposed legislation with the relevant provisions of Convention No. 182.

With regard to the preparation by the Ministry of Education of draft legislation to make primary education compulsory, the Government had, in addition to the new policy mentioned earlier, identified and was in the process of addressing the following major factors affecting access and retention of children in school: the continued prevalence of poverty in many parts of Kenya, as manifested in the lack of food and finances in many schools; gender bias that had continued to lead to preference for boys' access to education as opposed to girls; teenage pregnancies which had continued to contribute to increased school drop-out by girls; prohibitive distances to schools, particularly among nomadic communities; the occupation of children, for example in coffee picking, tourist activities and livestock herding; unfavourable geographic and climatic conditions in certain regions; excessively heavy curricula coupled with inadequate implementation; cultural practices, such as early marriages; and inadequate emphasis on the identification and education of disabled children. For the sake of further clarity, he emphasized that the age of completion of free and compulsory schooling remained 16 years.

The Government acknowledged that many children continued to work in family agricultural activities and business enterprises during school holidays and after school without pay. However, he said that this was regarded as part of their upbringing and integration into society and did not interfere with their education or moral upbringing. Nevertheless, the Government acknowledged that, due to the poverty prevailing in some parts of Kenya, especially in the arid and semi-arid areas, unfortunate situations did occur where children of school age were compelled by their parents or their own economic situation, for example due to HIV/AIDS, to work for their survival. In this connection, he indicated that, in the framework of the ongoing review of the labour legislation, the Government intended to amend section 10(5) of the Children Act, 2001, so as to bring it into line with the provisions of the Convention.

He added that the Government had taken careful note of the comments made by the Committee of Experts regarding the possibility of the employment of children with the prior written permission of an authorized officer and was taking the necessary measures in this respect. It had also taken careful note of the concerns expressed with regard to the performance of light work by children and would take the relevant necessary measures in the framework of the ongoing revision of the labour legislation. With respect to the comments made by the Committee of Experts regarding the definition of hazardous work to be prohibited for young persons under 18 years of age, the Government was committed to taking the necessary measures, given that it had also ratified Convention No. 182, in consultation with the social partners and in the framework of the ongoing review of the country's labour legislation. Concerning the comments made by the Committee of Experts on the information contained in the 1998/99 Child Labour Survey and the draft document entitled "Child labour policy", it should be noted that a new major development had occurred in this area following the introduction of truly free primary education, as a result of which 1.6 million additional children had been enrolled in primary schools throughout the country. To conclude, he reaffirmed the Government's commitment to achieving the application of Convention No. 138 in practice and stated that he looked forward to a constructive dialogue in the Conference Committee.

**The Employer members** thanked the Government representative for the information provided and took note of the heavy emphasis that he had placed on Convention No. 182, which was nevertheless not the subject of the discussion. However, one aspect of the case that did overlap with the provisions of Convention No. 182 was hazardous work. In this context, it would have been helpful if the Government could have explained in writing to the ILO how the Children Act, 2001, related to Convention No. 182. They emphasized that Convention No. 138 was perhaps the most technical and detailed of the fundamental Conventions. The Committee of Experts had identified six areas in which the national legislation fell short of the provisions of the Convention. The Government had indicated to the Conference Committee that it was aware of these areas, but had not provided any information on any action that was being taken to address these issues or on when draft legislation would be forthcoming in order to bring the law into line with the Convention. This issue had already been discussed the previous year. The task of bringing the legislation into line with the Convention was not easy, and ILO assistance might be useful in this respect, especially since the way in which the Government had addressed the comments made by the Committee of Experts, as a six point list, seemed to indicate that it did not know exactly what action to take to resolve the problems. With respect to compulsory education, the Employer members requested clarification on the gap which seemed to exist between the age at which compulsory education ended (which had been understood by the Employers to be 13 years) and the minimum age for admission to employment (16 years).

With regard to the six points raised by the Committee of Experts, they noted, first, that the extension of the minimum age for admission to employment beyond industrial enterprises was an important point, as the legal gap in this area left a large potential workforce of children without legislative protection. In this respect, they noted that although compulsory primary education was not mentioned explicitly in the Convention, it was inextricably entwined with the provisions on minimum age and needed to be addressed in order to comply fully with the Convention. Secondly, with regard to the definition in the national legislation of child labour as consisting of labour in exchange for payment, the law did not provide effective protection given that 80 per cent of children were engaged in unpaid work. There was a need to adopt measures in order to secure for these children the protection afforded by the Convention. Thirdly, with regard to permits allowing the employment of children, this issue raised three complex questions: child labour under the age of 13 years, light work and hazardous work. The Employer members suggested that the Government seek ILO assistance to address these overlapping issues. The question of light

work in particular was a complicated issue which needed to be examined further in the light of the inconsistencies noted by the Committee of Experts between the various legislative provisions. With regard to hazardous employment, although the Children Act, 2001, provided for the protection of every child from hazardous work, the Government had still not adopted the implementing regulations to define the types of hazardous employment covered by this provision. Thus, although there was an appearance of protection in law, the necessary regulatory regime had not been established in order to allow such protection to be implemented. The Employer members welcomed the expression of goodwill by the Government, but noted that there was a need to move forward in order to produce concrete results. They suggested that ILO technical assistance might be necessary in order to adopt the necessary legislation and take measures for its implementation.

**The Worker members** thanked the Government representative for the information provided, which showed that the new Government intended to make real progress. They also welcomed the assurances given about the Government's commitment to provide basic education, which was essential for the effective elimination of child labour. They also welcomed the wide distribution of the recommendations of the Meeting of Experts from the African Region on Labour Inspection and Child Labour held in Harare in September 2001 as they were particularly relevant to the discussion. They recalled that in the early 1990s the Government, in tripartite collaboration with the social partners and with the support of the ILO, had developed one of the most successful labour inspection services in Africa. From 1990 to 1995, the number of inspections carried out had arisen from 3,700 per annum (performed by 220 inspectors) to 26,800 (by 180 inspectors). However, much of this great progress had been lost in recent years during the corrupt regime of the previous administration. Moreover, IMF and World Bank structural adjustment policies had imposed cuts in public expenditure and the number of labour and factory inspectors had fallen by more than one-third, despite an increase in the working population and the number of enterprises. Although the remaining inspectors had continued to perform well until the end of the 1990s, the dramatic explosion of corruption under the last regime had destroyed these gains, leading to an increase in the worst forms of child labour and the advent of some forms of child labour, such as stone crushing.

The new Government deserved an advance of trust and it should be expected to fulfil its obligations and demonstrate transparency in the struggle against child labour. This required clear minimum age legislation, education laws that were consistent with it and a labour inspectorate restored to its former state. Above all, it required a re-invigoration of the tripartite alliance and social dialogue that would provide the vehicle for implementing the law. Implementation was the key and the ILO should support the new Government and the social partners in that endeavour. The Bretton Woods institutions should cease to undermine Kenya's public services, in accordance with the Worst Forms of Child Labour Recommendation, 1999 (No. 190) which called upon international institutions to support the aims of Convention No. 182, particularly since Kenya had ratified both Conventions Nos. 182 and 138, which were inextricably linked.

There was no doubt that the Government had the ability, the opportunity and political will to tackle this significant problem. That made it all the more puzzling that the Government had still not adopted the legislative amendments requested by the Committee of Experts for so many years. The Government had made progress with the adoption of the Children Act in 2001 and the Worker members had welcomed, in the previous discussion of this case, its decision not to pursue the legislative amendment to section 2 of the Employment Act, 1976, in order to reduce the minimum age, with the result that the minimum age for admission to employment or work was maintained at 16 years. However, the fundamental problem persisted. The Government had assured this Committee in 2001 that it would extend the legislation to other sectors of the economy by December 2002 in order to address the fact that section 25(1) of the Employment Act limited to industrial enterprises the minimum age for admission to employment. Section 3(1) of the Employment (Children) Rules, 1977, which allowed the employment of children with no apparent minimum age restrictions pursuant to a written permission by an authorized officer, were incompatible with Articles 2 and 7 of the Convention. No permit should be issued if it allowed employment or work: firstly, by any person under the age of 13 years irrespective of the type of work; secondly, for persons between 13 and 15 years of age, unless this was for light work (the Government not having availed itself of the developing country derogations of 12 and 14 as contained in Article 2(4) and Article 7(4)); and thirdly, for persons between 16 and 18 years of age in any hazardous works. The Worker members therefore welcomed the assurances of the Government that this matter would be dealt with. They added, in this connection, that it was also necessary to dispel some of the unhelpful blurring of the Convention's minimum age requirements which were the currency of certain campaigners who seemed determined to explain why child labour could not be eliminated and who, at their most extreme, talked about "children's right to work", and who also raised the issue of the lack of high-quality education as a reason for not removing children from work and into schools. The Worker members emphasized that over 3 million children aged 6 to 14 were working in Kenya. At least 1.3 million did not attend school. Increasing school enrolment itself would strengthen the campaign for quality education, but suggesting that children were better off at work than learning at least literacy and numeracy could hardly be construed as a path to empowerment. The ILO had been given the responsibility to set and supervise international labour standards on child labour, the terms of which were firmly supported by the Worker members. However, IPEC officers in the field were often forced to deal with such mischievous misinterpretations of the Conventions, which could confuse ILO constituents and undermine the basis for tripartite collaboration in the struggle against child labour.

The new Government had demonstrated its political will by adopting legislation to make primary education compulsory. The Worker members welcomed this absolutely essential measure to combat child labour. However, the Children Act, 2001, did not specify the age at which compulsory school ceased. The Government's Child Labour Report, published in 2001, indicated that compulsory education lasted from 6 to 13 years of age. Although this fitted with the definition of basic education agreed upon in the debate on Convention No. 182, there still remained a discrepancy between the age of completion of compulsory schooling (13 or 14) and the minimum age for admission to employment or work (16 years). They hoped that the Government would clarify this matter in the new legislation. Section 10(5) of the Children Act, 2001, which defined child labour as any situation in which a child provided labour in exchange for payment was also inadequate in light of types of child labour such as forced labour and in view of the findings of the Child Labour Report, according to which nearly 79 per cent of children who worked did so in family agricultural undertakings and were not paid. This meant that the majority of children working in Kenya were excluded both from the Children Act, 2001, which covered all sectors but not all types of employment relationship, and the Employment Act, 1976, which covered only industrial undertakings. Furthermore, the Children Act, 2001, did not deal with hazardous work. In a country where the majority of children worked in agriculture – including commercial agriculture both in large undertakings and in smallholdings – fishing, construction, domestic service and the urban informal sector, the restriction of the coverage of the legislation to paid work in industry excluded most of Kenya's child labourers from the protection of the law. Given that Kenya had not availed itself of any of the exemptions envisaged in the Convention, given that the Convention's fundamental purpose was the effective abolition of child labour and given that the Convention was a fundamental human rights standard promoted for universal ratification, the principles of which were also binding by virtue of the 1998 Declaration on Fundamental Principles and Rights at Work, such minimal application greatly diverged from the obligations incumbent on the Government. The Worker members therefore hoped that the drafting of comprehensive legislation on child labour would proceed rapidly and would cover all sectors. They also agreed with the statement made by the Employer members that ILO assistance in this process should be sought and provided.

Finally, with regard to the definition of hazardous work, the Government had admitted the need for such a determination as long ago as 1990 and should now proceed expeditiously with that definition on the basis of tripartite consultation. As to the argument that non-commercial family agriculture was exempt from the Convention, they recalled that agriculture was one of the world's most hazardous occupations, whether on plantations or in family farms, and in Kenya many family farms were locked into the commercial agricultural market. There were, for example, some 400,000 small tea growers in the country. According to a recent report by Ms Sonia Rosen, children working in coffee, tea and sisal plantations often woke up before sunrise in order to walk, sometimes long distances, from their homes to the plantations. They had no breaks, were not allowed to talk and rarely had time to eat. The work was physically demanding, requiring bending, kneeling, climbing ladders and carrying bags or buckets. Children also weeded and cultivated the soil, fixed irrigation canals and applied dangerous pesticides, often using dangerous tools and sometimes operating unsafe farm machinery that they did not know how to operate. Many activities, such as carrying heavy and oversized loads, resulted in permanent disabilities and injuries. Fatigue was an ever-present problem because children could work for between 8 and 12 hours. Because

they were outside all day, children were particularly susceptible to heat exhaustion, disease-carrying insects and illnesses posed by unsanitary drinking water. The myth that child labour in agriculture was not hazardous should finally be dispelled.

**The Worker member of Kenya** associated himself with the statement made by the Worker members and informed the Committee of the work accomplished by the Kenyan Central Organization of Trade Unions (COTU) with a view to the elimination of child labour. The Child Labour Department of COTU had carried out a number of awareness-raising workshops for trade union as well as religious and community leaders with the assistance of the ILO-IPEC programme, the American Center for International Labour Solidarity and the International Confederation of Free Trade Unions. The programmes focused on two COTU affiliates, namely the Kenya Plantation and Agricultural Workers' Union and the Kenya Union of Sugar Plantation Workers. As a result of these efforts, there was a hope that clauses on child labour might be incorporated in collective agreements within the coming year. There was also hope that the issue of age disparity in the definition of child labour would be addressed by the Labour Laws Review Task Force, while the Children Act, 2001, could provide a clear legal basis for defining the term "child"; this issue needed to be explored further in order to adopt a definition of child labour which would be in accordance with the Convention. The new Government seemed to be committed to eradicate child labour, as evidenced by the fulfilment of its promise to introduce free primary education. He expressed the hope that the new Government would also recognize the necessity of training and retraining labour inspectors so that they would be able to cope with the new challenges at the workplace, especially with respect to child labour. Child labour was rare where trade unions existed and where a collective agreement was in place. However, it was present in the many small farms where labour had not yet been organized. The eradication of child labour required concerted efforts by all the social partners, and needed to be extended to the fisheries and mining sectors of the economy. He urged the ILO to continue to provide assistance so that poverty, which was the main cause of child labour, could eventually be overcome.

**The Worker member of Finland speaking on behalf of the Worker members of the Nordic countries**, raised the question of the education of children, and especially girls, who should receive education on an equal basis with boys. Parents often undervalued the education of girls in Kenya, partly because adult women faced discrimination in employment and were thus viewed as having a lower earnings potential. As a result, only 35 per cent of girls finished school. It was extremely important for the Government to do its utmost in its fight against child labour and to secure education for girls. Children were the most valuable resource and represented the future. Their place was not at work, but at school. The report mentioned earlier by the Worker members indicated that poverty was a serious problem in Kenya, due to which children often worked as casual workers during harvest time. Even though the Government had shown a positive will by introducing free compulsory education, many hindrances still remained for families with low incomes to educate their children. For instance, such families could not afford to buy school uniforms and the Government should abolish all such hindrances. Finally, she emphasized the importance of providing free meals at school and urged the Government to tackle this matter, as starving children could not benefit from their education.

**The Government member of the United States** stated that the issue of child labour was one of utmost concern to her Government. She noted the statement made by the Government representative and welcomed the fact that primary education was now both free and compulsory for children up to the age of 16 years, if that was indeed what the Government was indicating to the Committee, as well as the other efforts made by the Government to bring the law and practice into conformity with the Convention. She further noted that Kenya was a recipient country of United States government funding through the ILO's IPEC technical assistance programme and encouraged the Government to work with the ILO to bring its child labour legislation into conformity with Convention No. 138.

**A Worker member of Chad** stated that the information supplied by the Government representative to the Committee had been encouraging. According to earlier statistics, over 3 million children between the ages of 6 and 14 years were obliged to work. Of this number, more than half could not have access to primary education and a large majority could not have access to secondary education. The Government representative had indicated that since January 2003 some 7 million children had access to education, which represented important progress.

The problem of child labour in Kenya was nevertheless serious. The corruption of the previous Government and structural adjustment had been partially responsible for this situation. The African trade union movement was confident that the new Government would re-establish tripartism in Kenya, in conformity with the respective ILO Conventions. Indeed, the application of the eight fundamental ILO Conventions and dialogue among the social partners would eliminate child labour in itself. He hoped that the Government would take measures in this regard.

**Another Worker member of Chad** stated that child labour affected the development of the country and the dignity of children. In Kenya, the problem of child labour was serious. According to the statistics, 1.9 million children from 5 to 17 years were working. Many of them worked not for remuneration, but for a small ration of food. They worked without rest periods, from the beginning of the day until night fell, without the possibility of time off. They worked because their parents were poor. He indicated that the concept of the establishment of a minimum age for admission to employment or work was important, and that the Free Confederation of Workers of Chad (CLTT) welcomed the statement by the Government that it no longer planned to reduce this minimum age from 16 to 15 years. In any case, several problems remained. The age of the completion of compulsory schooling had to be aligned with the minimum age of admission to employment or work. Education had to be accessible and free of charge for all, and, with a view to avoiding the problem of unemployment, should also offer children adequate vocational training. Furthermore, the problem of the schooling of young girls was of primary importance. In fact, in African countries, and particularly in Kenya, a large number of young girls worked constantly in dangerous occupations without any social coverage. They frequently left their homes alone and at a very young age, and they worked as servants in the service of unscrupulous employers. He hope that the Government would pay particular attention to the conclusions and recommendations of the Committee of Experts with respect to the legislation and that it would take the necessary measures in practice. The destiny of over 2 million children depended on the will of the Government to apply the principles of Convention No. 138.

**The Government representative** thanked the Employer and Worker members as well as the speakers who had taken the floor, for the debate which was a characteristic example of a constructive dialogue which should take place in the Conference Committee in order to help governments implement their obligations. With regard to the comments made by the Employer members on the need to bring the labour legislation into conformity with the Convention, he stated that a tripartite task force had been established in order to review all labour laws, as quite a few of them remained unchanged since 1963 when Kenya had become independent. Every effort was being made to review the labour laws in line with ratified Conventions, especially Convention No. 138. On the basis of an agreement reached between the Government and the ILO, which was represented in the tripartite task force by a senior expert, draft legislation would be examined by the ILO prior to its introduction to Parliament for adoption and would be transmitted to the ILO for printing.

With regard to the existence of a gap between the age at which children completed their compulsory education and the minimum age for admission to employment, he explained that most children tended to start school at the age of 6 years. However, in many cases and according to the circumstances, children started school at the later age of 7 or 8. The compulsory education system lasted for ten years if schooling had started in 1998, and for eight years if it had started before then. Consequently, children who had started school before 1998 at the age of 7 or 8 would complete school at the age of 15 or 16. In all other cases, the minimum age at which children would complete their compulsory education was 16 years of age. While most children went to school at an early age, certain difficulties existed due to the fact that a large part of Kenya was desert or semi-desert and it was difficult to gain access to school in these areas.

With regard to the definition of child labour, a clear definition was not yet available. It was customary for children to do light agricultural work in family enterprises after school or during holidays under parental supervision. In his view, this practice was part of the normal upbringing of children and was common even in Europe. Regarding the issue of hazardous work, a clear definition had not yet been adopted and this matter was currently under discussion. According to the available legislative drafts, the definition of hazardous work would probably include heavy, underground or night work, or work involving dangerous substances. With regard to light work, a definition would be adopted in the future on the basis of a tripartite agreement and would be reflected in legislation. In this respect, it should be clarified that children below 13 years of age were not permitted to work, including the performance of light work. With regard to work permits allowing the employment of children below the normal minimum age, he wished to specify that for any labour commissioner to issue such permits a series of special

conditions had to be fulfilled; for instance, the work carried out had to be light work under supervision and should not affect the moral integrity of the child. As to the point raised with regard to girl children, he endorsed the view that there was a need to pay equal attention to girls as to boys. Certain issues, such as forced marriages and unwanted pregnancies, constituted a problem to which the Government was paying attention with a view to finding a solution.

**The Employer members** thanked the Government representative for the information provided which had confirmed the comments they had made earlier about the existence of a gap between the age at which compulsory schooling ended and the minimum age for admission to employment. It seemed that the age at which children happened to conclude their compulsory education depended on the age at which they had started school and that this age varied. It was necessary to indicate in this respect that there was a need for a more regular educational system. The Employer members did not doubt the good intentions of the Government, but could not consider that a simple statement that the Government would make every effort to address this issue constituted a satisfactory result, especially in light of the fact that this case had been discussed the previous year and there had been no new developments since with regard to the application of Convention No. 138. Concerning the Government's statement that draft legislation was under preparation and would be given to the ILO for printing, they suggested that the ILO should provide assistance at an earlier stage to facilitate the development of such legislation.

**The Worker members** stated that this case had been examined with the attention it deserved and thanked the Government for their observations and assurances, as well as the Employer members for their comments. After having heard the Government's summary, the Worker members were puzzled by the fact that millions of children continued to work in Kenya. The fundamental problem was that the legislation remained contradictory and incoherent and was not in conformity with the Convention. The Worker members expected the new Government to rebuild and strengthen an effective tripartite alliance in the country in order to eradicate child labour and promote universal basic education. They also expected the Government to avail itself, as a matter of urgency, of ILO technical assistance from all relevant departments in order to develop coherent legislation in conformity with the Convention. ILO assistance, a coherent legislative framework, an effective labour inspectorate, strong tripartite consultations and inter-agency cooperation among the authorities, including support and not hindrance from the Bretton Woods institutions, were key tools for practical success.

The Worker members concluded by referring to the case of Benta, a 10-year-old girl who worked in a coffee plantation. Exposure to pesticides put children like her at greater risk of developing skin irritations, breathing difficulties and long-term health problems, including cancer. Young pickers also suffered from snake bites, back strain and other injuries. Benta did go to school, but on Saturdays she reported by 7 a.m. to the coffee fields, where she earned less than $1 for ten hours of work. Her hands were very painful and the chemicals burnt her face as if hot water had been poured on it. The Worker members looked forward to the Government's next report and wished them and Kenya's social partners every success in their efforts. Benta and millions like her, as well as the members of the Committee, were looking forward to concrete results.

**The Committee noted the information provided by the Government representative and the discussion that followed. It noted the information in the Government's last report that the draft legislation to reduce the minimum age from 16 to 15 had been withdrawn. The Committee requested the Government to provide information in its next report containing statistics on the number of boys and girls who were working, their ages, the sectors concerned and the geographical areas. The Committee noted the statement by the Government representative that the various matters raised by the Committee of Experts would be taken into consideration. The Committee noted in particular the indication by the Government representative that a free and compulsory primary education system for children of school age had been established as from January 2003, as well as the results obtained by this measure between January and May, which showed that over 1 million more children were attending school than before.**

**The Committee, recalling the fundamental importance of Convention No. 138 for the abolition of child labour, and particularly the importance of establishing the minimum age for admission to employment or work in all sectors, including agriculture, expressed the hope that the Government would maintain its efforts with the social partners and the assistance of the Office to give effect to the Convention in both law and practice. The Committee urged the Government to request ILO technical assistance with a view to clearly establishing the situation with regard to the age of completion of compulsory schooling and the minimum age for admission to employment. The Committee emphasized the benefits of labour inspection for preventive purposes in determining hazardous work, in accordance with the Convention, with particular reference to the agricultural sector.**

**Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979**

***Ecuador*** (ratification: 1988). **A Government representative** (Minister of Labour and Human Resources) stated that the Government of Ecuador had not avoided taking measures to give effect to the requirements of Convention No. 153. In the last six years, six different Ministers of Labour had succeeded one another, having no possibility in their short terms in office to develop any coherent labour policy and plans of medium and long term, nor present and effect changes in the labour legislation. The Committee of Experts had observed that sections 330 and 331 of the Labour Code, which gave certain flexibility for the determination of the hours of work and obligatory rest periods on weekends and holidays, could potentially lead to abuse on the part of the employers due to lack of legal clarity as to the exercise of those rights.

Nevertheless, section 47 of the Labour Code limited the working day to eight hours of work, and work on Sunday and Saturday afternoons was considered an exception, as defined in section 52(2) of the Labour Code, according to the specificity of the activities carried out, such as transport by road. The fact that road transport was the only means of delivery of the merchandise and resources did not imply that workers did not benefit from the minimum rest periods, substituting weekends worked for other days of the week. Pay for working on Saturday or Sunday was increased by 100 per cent in accordance with section 55(4), while section 56 stipulated that "a contract cannot fix a longer duration of work in a day than those established in the preceding section", and enforced by a sanction under section 626 of the Labour Code.

In the light of the above, there was no apparent violation that limited the minimum rights, whereas, read alone, sections 330 and 331 of the Labour Code could in fact obscure the clear provision defining the entitlement to the minimum rest periods. Without prejudice to this conclusion, there are general provisions in the labour law and the Constitution, that prevail over these questionable provisions, and they will be detailed and analysed in the Government's detailed report that would be requested in 2003.

The Government considers as a relevant priority the need to harmonize the legislation with the Convention. Ecuador's intention was to take seriously the international obligations established by the ILO, and for that purpose it requested the technical assistance of the Regional Office in drafting the regulations to give clear application to the provisions of the Convention mentioned by the Committee of Experts. It hoped that the results of the requested mission would be included in its next report to be provided by September of this year.

**The Employer members** stated that this Committee had not yet dealt with this Convention but that the comments by the Committee of Experts dated back to 1995. Referring to the observation of the Committee of Experts and the statement made by the Government representative, they pointed out that there was a discrepancy between the national law and the provisions of the Conventions, notwithstanding the interpretation of the national legislation made by the Government, which differed from that given by the Committee of Experts. Nevertheless, it should be stressed that regulations on working time were subject to constant changes and needed to be adapted to socio-economic realities. Convention No. 153 was 20 years old and had only been ratified by seven member States. While acknowledging the discrepancy between national law and the provisions of the Convention, they considered that the discussions should bear in mind that the Governing Body had classed this Convention among those that needed to be revised.

**The Worker members** emphasized the importance that was traditionally being accorded to the issue of working time within the ILO. For them, it was crucial to have a discussion on the law and practice concerning the road transport sector in Ecuador; the legislation of Ecuador was not yet being adapted to the requirements of Convention No. 153. As such, according to the Labour Code of 1997, employers could make contradictory decisions on the duration of working time, including on Sundays, Saturday afternoons as well as on public holidays. Respect of the principles contained in the Convention was all the more important when a country had a complex road network and an insufficient infrastructure. Moreover, the case of Ecuador reflected a serious health and safety at work situation, a topic that was at the heart of the integrated approach currently being discussed at this session of the Conference. Finally, this case was important to the extent that the race for competitive-

ness directly affected the working conditions in this sector, which also suffered from the absence of an efficient labour inspection service. In conclusion, the Worker members suggested that the offer for technical assistance by the Office should be renewed. They also requested that the Government bring, without delay, its legislation into conformity with the Convention, reinforce its labour inspection services in the road transport sector and finally reply to the comments that had been transmitted by a worker organization many years ago.

**The Worker member of Ecuador** stated that the biggest transport companies in the country were those that paid the lowest salaries to their drivers. In this sector, overtime was often not compensated. The roads in Ecuador and in the whole region were in a very poor condition. He requested the Government to carry out the labour reform, as promised by the Minister, and to do so in consultation with the social partners. Without prejudice to the labour reform, priority should be given to the application of Convention No. 153. Failing this, he suggested this case should be examined anew next year.

**The Government representative** stated that measures had been taken to repair the damage caused in 1998 by the climatic phenomenon called El Niño. There were in place labour inspection services and a legal framework, as well as the regional accords on transportation. However, it was not the Ministry of Labour which was responsible for these matters. He repeated that reforms were being pursued on the basis of tripartite dialogue. The Minister of Labour could suggest to the President of the Republic to submit the draft of the reform to the legislative authority, but could not do so directly himself. His Government was observing the law and enforced the provisions of the Labour Code including those on hours of work.

**The Employers members** agreed with the comments made by the Worker members and supported the common request that the national legislation should, as soon as possible, be brought into line with the Convention. They added that they had not made any reference to the practical relevance of the Convention but to the low number of ratifications and the fact that the Governing Body had acknowledged the need to revise this Convention.

**The Worker members** recalled that the law should be amended to bring it into conformity with the provisions of the Convention. The law was still in force and had to be applied in full and without restriction. Concerning the proposal for technical assistance, they noted that they had not received any response from the Government in this regard. They urged the Government to supply, before the next session of the Committee of Experts, the report requested with information on the developments in law and practice.

**The Committee took note of the statement of the Government representative concerning national law and practice in the hours of work and rest periods in road transport and the discussion which followed. The report of the Committee of Experts had revealed discrepancies in the previous legislation and in the Labour Code of 1997, which contained special provisions concerning conditions of work in public and private transport enterprises. The legislation, in its present form, did not ensure conformity with the main provisions of the Convention. The Committee urged the Government to adopt the necessary administrative and legal measures in consultation with the interested representative organizations of workers and employers with a view to bringing the national legislation and practice into conformity with the requirements of the Convention. The Committee took note of the Government's request for the continuation of technical cooperation and hoped that it would be effective. It invited the Government to supply in its next report full information on the progress achieved in the application of the Convention.**

**Convention No. 162: Asbestos, 1986**

***Croatia*** (ratification: 1991). The Government provided the following information.

In October 2000, the Ministry of Health set up a multidisciplinary working group composed of the representatives of different ministries, institutes and trade unions to deal with the issue of workers who were professionally exposed to asbestos fibres and contracted related occupational diseases. Between August 2001 and January 2002, a number of meetings of this working group took place, referring in particular to problems of diagnosis, treatment and claims for damages of persons with asbestosis-related diseases.

The company, Salonit d.d. Vranjic, the only company in Croatia engaging in asbestos-based production, initiated the resolution of the problem of using asbestos. In October 2001, the company submitted to the Ministry of Economy its development programme presenting the technology for transition from current asbestos-cement production to new non-asbestos technologies. The programme also dealt with environmental activities related to the decontamination of the factory site, disassembly of the plant and rehabilitation of the quarry in Mravinci.

With regard to the technical part of the programme, the Ministry of Economy, in its report of 4 December 2001, found it satisfactory for the moment, considering the fact that the first priority was to deal with the damage claims of persons with asbestosis and to rehabilitate the factory and the site. As regards the protection of health and environment from asbestos waste and emissions, the Ministry for Environmental Protection and Physical Planning, in its letter of 24 September 2001, stated that a review of the existing legislation related to waste management was under way and that it was to be harmonized with EU regulations in addition to the already existing regulations that directly or indirectly regulated particular issues related to asbestos including: the Ordinance on the Requirements in Hazardous Waste Management; Ordinance on Limit Values for the Emission of Pollutants into Air from Stationary Sources; and the Rules on the Estimate of Environmental Impact.

On the basis of the multidisciplinary consideration of the problems related to the production, marketing and exposure to asbestos, the working group adopted, at its meeting of 12 July 2002, proposals for the solution of the problem, which covered in particular the questions of the "Diagnosis and prevention of asbestos-related occupational diseases" and the "Payment of damages in the case of asbestos-related diseases". As to the "Issue of production at Salonit d.d. Vranjic", the working group engaged the Ministry of Economy, the Ministry of Finance, the National Privatization Fund, the Ministry for Environmental Protection and Physical Planning and Salonit d.d. from Vranjic to propose to the Government of Croatia the solution of this problem by means of a separate law modelled on the Slovenian Law on the Prohibition of Production and Marketing of Asbestos Products, and Provision of Funds for Restructuring of Asbestos Production into Non-Asbestos Production and related regulations, particularly because of the fact that the Government of Croatia, having signed the Stabilization and Association Agreement, was obliged to harmonize its legislation with the legislation of the EU, including the EU Directives related to asbestosis.

**The Government representative** stated that immediately after receiving the observations, the Association of Persons with Asbestosis-Vranjic, the Institute for Safety at Work of the Ministry of Labour and Social Welfare had forwarded them to the State Inspectorate of the Government of Croatia which carried out an inspection, compared the current situation with the provisions of the Asbestos Convention, and finally adopted a number of solutions for improving the situation. The Government of Croatia encouraged the diagnosis, treatment and damage claims of the persons with asbestos-related diseases, and proposed solutions with the involvement of all competent bodies of the government administration and the representatives of the board and the trade union of Salonit-Vranjic factory.

The question of the workers who were exposed to asbestos fibres at work and thus contracted occupational diseases was raised in mid-July 1999 through the request of the Association of Persons with Asbestosis, who used to work for the company Salonit d.d. in Vranjic, for retroactive recognition of an extra insurance time. The Committee for Labour, Social Policy and Health of the House of Representatives of the Croatian Parliament charged, on 26 June 2000, the Ministry of Labour and Social Welfare, and the Ministry of Health to consider the options and to propose the way of retroactively implementing the provisions of the Law on Extra Insurance Time No. 71/99 for the employees of Salonit and charged other institutions to propose possible solutions for permanently abandoning the manufacture of asbestos products. During this procedure, other important problems related to asbestosis in Croatian workers were noted such as the increased reports of individual medical expert witnesses in lawsuits. This was why the Ministry of Health set up, in October 2000, a multidisciplinary working group composed of the representatives of the ministries, institutes and trade unions, to deal with the same issues. Additionally, the Government of Croatia entrusted the multidisciplinary working group with preparing and submitting to the Government a special study on the problems of diagnosis, treatment and damage claims of persons with asbestos-related diseases, including the analysis and proposed solutions. Upon its completion, the study was forwarded to all members of the working group for their comments. Written proposals and opinions were forwarded by all agencies whose representatives participated in the work of the working group.

In the second half of the year 2001, the labour inspectors of the State Inspectorate undertook inspections for occupational diseases caused by the harmful effects of asbestos (asbestosis) at workplaces that used or were assumed to have used asbestos in their operations. The inspections were undertaken with the manufacturers of asbestos-cement products, at shipyards, shipwrecking plants, and with employers who had used asbestos for braking systems. Ac-

cording to the latest inspection findings the workers were regularly sent for periodic medical check-ups when they performed work under special working conditions, and the employer undertook specific measures to reduce the negative effects of asbestos. He then gave some figures related to the company in question. The resolution of the problem of using asbestos was initiated by Salonit d.d. Vranjic, the only company in Croatia engaging in asbestos-based production. It was necessary that, in addition to Salonit d.d. Vranjic, all relevant institutions and the State should join hands in solving the problem of production in Salonit. According to its own information, Salonit Vranjic – currently employing 265 workers – was for the most part privately owned. In October 2001, the company submitted to the Ministry of the Economy its Development Programme, presenting the technology for transition from current asbestos-cement production to new non-asbestos technologies (PEHD pipes) and the production of undulated plates in non-asbestos fibre cement technology without filter press. The first priority of the Ministry of the Economy was to deal with the damages claims of the persons with asbestosis and to rehabilitate the factory and the site. The costs of the introduction of new non-asbestos technologies should be borne by the owner of the company. Considering the high level of cost of the transition to new technologies (about 11 million Euro according to the estimates of the Company Board) it was believed that because of the specific situation of Salonit, and to maintain employment, the company could, at this stage of reconstructuring, be assisted through adequate incentives (favourable loans for new technologies, guarantees, etc.). Moreover, the Ministry also believed that the problem of environmental pollution resulting from many years of work with asbestos was not only the problem of Salonit. It proposed a possibility for the financing of the decontamination of the factory from the national budget.

**The Employer members** thanked the representative of the Government of Croatia for his statement. They pointed out that the Committee of Experts had not yet taken into account the reply of the Government. They referred to several issues raised in the Committee's observation. In respect of the increased concentration of asbestos dust in the air that created health hazards for employees and people living in the environment, they requested the Government of Croatia to state the concentration limits allowed by national law. They also referred to the frequently repeated Committee observation that there was a general lack of appropriate information. They stated that the Government representative did not give details on the different issues raised in the Committee's observation. It had only indicated the subsequent measures taken and a few of these actions had been indicated in D.11, including the setting up of a Working Group to examine, in consultation with those concerned, the situation and to come up with possible measures to overcome the problems. They also noted that no concrete explanations had been given concerning compensation and insurances. They further noted that a new act would bring the national legislation into line with the EU standards. They supported the Government's intention to find a solution and urged it to take immediate effective action, especially to stop unprotected work resulting in exposure to asbestos. They asked the Government to indicate whether work in the factory was continuing and, if so, under what conditions.

**The Worker members** indicated their great interest in the fact that the choice of the cases for discussion reflected the whole range of ILO Conventions, in addition to the so-called fundamental Conventions. While Convention No. 162 belonged to the more technical group of Conventions, it appeared far less technical when examined in substance. One cannot fail to observe that asbestos was an extremely dangerous product, the harmful effects of which had been widely studied. In Belgium, asbestos was associated with what was commonly called "a soft death", an atrocious, slow and very painful death. In this sense, the nature of Convention No. 162 was not at all technical; it was about the life and death of workers.

It was important to discuss the difficulties in the application of this Convention because similar realities existed in a number of countries, and because of the low ratification rate of this Convention. More than ten years after its entering into force, only 26 States had ratified it. It was therefore desirable that the present discussion would encourage other States to ratify Convention No. 162, which the Workers' group had qualified as "fundamental" for workers in relevant sectors.

The Worker members referred to instances of malfunctioning and problems of application noted by the Committee of Experts concerning the fate of the workers and the inhabitants of the area of the Salonit factory. According to the Association of Worker Victims of Asbestos in Vranjic, 200 of them had died. The responsibilities in this case did not only lay with the present private employer but it was more that of the Government of Croatia.

Referring to the exact wording of the provisions of the Convention as well as to the comments of the Committee of Experts, the Worker members stressed the following violations: Article 12 (prohibition of spraying all forms of asbestos); Article 14 (adequate labelling of the product and the provision of information to the workers concerned); Article 18 (protective measures concerning workers' clothing); Article 19 (risk-free elimination of waste containing asbestos and protection of the environment); and Article 22 (promotion of information, dissemination and education). In their opinion, the violation of Article 22 came close to a premeditated criminal act and the Government must react quickly to remedy the situation, following the example of Slovenia which, confronted with similar problems, had succeeded in adopting the necessary measures. The progress referred to by the Government turned out to be insufficient. Every 20 days, a person died from the consequences of the irresponsible way asbestos was being handled. In addition to financial compensation, the Government should adopt mandatory legislative measures that would put an end to this very serious and unacceptable situation. To this end, they suggested that the Government should request technical assistance from the ILO.

**The Worker member of the Netherlands** noted that this was a terrible case and wished to be quite blunt in his remarks. While he considered the behaviour of the enterprise concerned as irresponsible, it was the Government that was responsible for the implementation of the Convention. Even though the Government talked about its intention to change its legislation to conform to EU legislation, this deplorable practice of exposure to asbestos at the workplace had continued for a few years. He noted the difficulties encountered in eliminating this dangerous situation and urged the Committee of Experts to closely monitor it by more frequent examinations than the five years of the normal reporting cycle, irrespective of the proposed governmental intention to conform to EU standards. Conforming to the much stricter EU standards in law and in practice would take the country many years. He also thought that other provisions of the Convention such as Articles 4, 5, 11, 17 and 21 should probably be invoked in this case. He emphasized the fact that it was not only the protection of workers in the production and use of asbestos-containing products that had to be resolved, but also the work situations involving maintenance, repair and demolition work. He recalled the enormity of present and future exposure of workers in the countries in the region where asbestos had been used extensively in many products and structures and more particularly in buildings and infrastructure that were now being gradually demolished and repaired. He wondered how many other factories in Croatia were making these products and how many other countries were in the same situation as Croatia where in the future many more people would die eventually of asbestos-related cancers which usually were diagnosed some 40 years after exposure.

**Another Government representative** thanked the members of the Committee who had made comments and assured them that they would be helpful in solving the problems under discussion. He gave a few details and figures in response to some of the questions raised during the discussion. Concerning the concentration levels of asbestos dust at the workplace in question, he cited figures to indicate that the concentration levels of asbestos dust at the workplace in question had significantly diminished. He gave indications of improvements in the conditions of transport, delivery, storage, handling, disposal of asbestos and asbestos-containing products. He stated that appropriate personal protective clothing and equipment was being furnished, washed and stored correctly. Proper washing facilities were also provided. The required information on the dangers and means of protection were provided including the production of relevant brochures and the organization of lectures on the subject. He said his Government was well aware of the seriousness of the situation and of its responsibility in the matter. The fact that it was one of only 26 countries to have ratified this Convention was proof of such awareness. The fact that it had set up a multidisciplinary working group that included the employers and the workers in order to deal with the question was another. He recalled the demanding nature of the task of adjustment to the EU standards, including in this domain of occupational safety and health. He agreed that the example of what had been done in the neighbouring country of Slovenia was what they sought to emulate but it had to be recalled that Slovenia was in a better position in the matter due to its higher level of development. He assured the Committee that his Government would do its utmost, with the collaboration of all, including the workers and employers, to solve this serious problem that was also detrimental to the touristic region where the enterprise was located. He indicated that his Government would be requesting the technical assistance of the ILO on the matter.

**The Worker members** considered that the discussion and what was at stake in this case were sufficiently clear. They reiterated that the Government could request the technical assistance from the Office.

**The Employers members** recalled that people had already been seriously affected by asbestos. They hoped that help would soon be provided to those concerned. They reiterated that the issue here was compliance with Convention No. 162 irrespective of the express intention to meet European standards. Obligations resulting from this Convention should be met as soon as possible. They pointed out that accepting technical assistance would be the right way to go.

**The Committee took note of the information communicated by the Government representative of Croatia, who recognized the seriousness of the situation, as well as of the subsequent discussions. The Committee took careful note of the information provided by the Government, in particular on the multidisciplinary working group that dealt with the exposure of workers to asbestos, and on the ongoing revision of the laws and regulations concerning the management and the handling of waste containing asbestos. The Committee expressed the hope that the Government would modify as urgently as possible the legislation and adapt it to EU standards so as to ensure the application of the Convention in this regard. Given that the Convention was essential to the workers of this sector, it should not only be applied in law but also in practice. The Committee requested the Government to adopt adequate measures in coordination and cooperation with the most representative organizations and other people concerned, with respect to health risks due to the exposure to asbestos as well as preventative and monitoring measures. The Committee took note of the interest of the Government in receiving technical assistance from the Office and it hoped that a request would be made along those lines.**

**Convention No. 169: Indigenous and Tribal Peoples, 1989**

***Paraguay*** (ratification: 1993).**The Government representative** (Deputy Minister of Labour and Social Security) stated that in his country there are 483 indigenous communities, of which 330 were registered; 68 per cent of them owned their land. In order to distribute more land to those communities, the Government could either buy this land directly or expropriate it on the basis of an evaluation. The redistribution of the lands to the communities had run into difficulties because of the lengthy process of evicting the farmers and of the opposition of the individual landowners to the expropriation procedures. The speaker indicated that 200.000 hectares of land still needed to be bought and distributed in the western region of the country and 40.000 hectares in its eastern region.

Referring to the complaint submitted to the Inter-American Commission on Human Rights concerning the situation of the indigenous communities in Chaco Paraguayo, he indicated that the Government was seeking an amicable solution by means of dialogue, which, regretfully, had not yet taken place. Together with the Paraguayan Indigenous Institute (INDI), the Government had elaborated a plan of action to analyse the situation and to take measures to find solutions to problems affecting indigenous communities. Also, a strategic plan had been elaborated in September 2002 with the representatives of the indigenous communities and would be presented to the Government when it would assume power on 15 August 2003. Referring to the complaint of the World Confederation of Labour of October 1997 concerning the labour conditions of members of indigenous communities in Chaco Paraguayo, the speaker stated that it was not possible to undertake labour inspections because of distance. It would take two to three days for the inspectors to reach the ranches mentioned in the complaint and the inspections could be further obstructed by the fact that members of the indigenous communities worked only sporadically and did not reside in this area.

The draft law mentioned in the observation of the Committee of Experts was before the Senate but had not yet been considered. The Government representative recognized the failure of the Executive Power to have consultations with the indigenous communities, but pointed out that a second draft law has been presented to the Chamber of Deputies, which had indeed been elaborated in consultation with the representatives of the indigenous communities and, with the change of Government in August 2003, the first draft was surely to be withdrawn.

**The Worker members** indicated that, in Latin America alone, the indigenous population was currently estimated at 30 to 40 million persons. Convention No. 169, which contained detailed and complete standards, represented a significant advance for the rights of indigenous peoples. The Office should encourage those Members that considered themselves in a position to apply its provisions to ratify the Convention. The Convention only guaranteed a minimum set of rights and obligations and ratifying States should seek to provide increased protection. The objective of this Convention was to recognize the collective cultural and social identity of these peoples and to guarantee their participation in the elaboration of public policy on matters of concern to them. Self-determination constituted in this respect a precondition for the complete and full exercise of the right of indigenous peoples to preserve and pass on their cultural identity. The main point, therefore, was that the legal system that governed and regulated, for example, indigenous territories, the employment conditions, vocational training and training in crafts, was in conformity with the first twelve Articles of the Convention.

The Government of Paraguay had limited itself to providing generic and insufficient replies to the supervisory bodies of the ILO. It had neither supplied a detailed first report nor the information requested by the Committee of Experts. Despite the absence of information from the Government, they could still observe several problems in the application of the Convention. The Committee of Experts had noted that in the region of Chaco where the indigenous population represented 60 per cent of the population, land that officially belonged to the indigenous peoples constituted 1.8 per cent. This land situation was fundamentally unjust. In this respect, the NGO Tierraviva, referred to in the communication from the National Federation of Workers (CNT) to the Committee of Experts, was examining three complaints that had been lodged with the Inter-American Commission on Human Rights. These complaints concerned the indigenous communities of Xakmok Kásek, Sawohyamaxa, and Yakye Axaseules. In all three cases the communities had been unsuccessfully presenting their claims, for several years now, about a part of the land of their ancestors to the competent national authorities or the courts. It was important to point out that CNT had informed the Committee of Experts of violations of Convention No. 29 in the Chaco region. It had been suggested to the Government to carry out inspection visits at properties in the region. However, it appeared from the statement of the Government representative that these inspection visits had not taken place.

In respect of Articles 2, 6 and 33 of the Convention dealing with the participation by and consultations with the indigenous peoples on matters that could concern them, it appeared from the statement of the Government representative that the consultations with the indigenous peoples on the draft law aimed at replacing the Paraguayan Indigenous Institute (INDI) and which had already been submitted to the Assembly by the Executive, had not yet taken place. According to CNT, the body that was intended to replace INDI would have less powers and functions than INDI. By weakening this body, the possibilities for the Government to develop a coordinated and systematic action in accordance with Article 2 of the Convention were significantly reduced. This could worsen the situation of indigenous peoples in Paraguay even more.

In respect of the application of Article 3 of the Convention dealing with the relative enjoyment of human rights and fundamental freedoms without hindrance or discrimination as well as without discrimination of female members of these peoples, information provided by the Government representative on the complaints alleging discrimination and their resolution could not permit to clarify the situation.

Article 32 of the Convention dealt with contacts and cooperation between indigenous and tribal peoples across borders. It would be desirable for the Committee of Experts and for the Office to encourage the establishment of international cooperation between Paraguay, Argentina and Brazil in a way that would permit the communities in one or the other countries to be in contact and thus to be in a better situation to preserve their collective identity.

In conclusion, there was a need to insist that Paraguay did not respect its elementary obligations of supplying a detailed first report and of replying to the comments of the Committee of Experts. If this country was facing problems in this regard, it could request the technical assistance of the Office as well as other multilateral bodies that could certainly provide it with technical and financial support. A mission should be sent to Paraguay in order to enable the Office to provide technical assistance based on an evaluation made on site.

**The Employer members** noted that this case was new in this Committee despite related observations made by the Committee of Experts in the past. They noted that in this case it was obvious that there were problems of communication as the requested information had not been submitted and concrete questions asked were not answered. This would point to an apparent negative attitude towards obligations resulting from this Convention on the part of the Government of Paraguay. They agreed with the statement made by the Worker members and added that with reference to paragraph 3 of the observation made by the Committee of Experts, the repeal of the Indigenous Communities Charter, adopted by Law No. 904/81, and consequently the abolishing of the Paraguayan Indigenous Institute (INDI) constituted serious setbacks as well as a violation of article 6 of the Convention, the meaning and purpose of which had been appropriately highlighted in the observation of the Commit-

tee of Experts. They regretted that the statement of the representative of the Government of Paraguay did not indicate the future steps it intended to take to overcome this non-compliance and stated that the Government should be requested to do so. With reference to the observation of the Committee of Experts contained in paragraph 5 concerning the communication sent by the World Confederation of Labour (WCL) in October 1997 under Convention No. 29, indicating that the working conditions of indigenous persons in ranches suggested an extensive practice of forced labour, they noted the comments of the representative of the Government of Paraguay concerning the legal and administrative measures taken in 2000 in this regard, and in particular those concerning inspections. However, the statement of the Government representative seemed to suggest that inspections were not effectively being conducted. Therefore, it would seem necessary for the national authorities to take new measures to solve the problem without delay. Despite the long speech by the representative of the Government of Paraguay, it did not contain precise elements in reply to the observation of the Committee of Experts. They asked the Government of Paraguay to indicate what measures it intended to take with a view to complying fully with the provisions of Convention No. 169. They had the impression from the statement of the representative of the Government of Paraguay that it wanted to present itself as being powerless against external factors. They wished to remind the Government of its responsibility to take appropriate legal and administrative action. They considered that full and substantial information was needed as regards action already taken or intended to be taken by the Government of Paraguay.

**The Worker member of Paraguay** indicated that in Paraguay – a bilingual country where the population spoke Guaraní and Spanish and where approximately 90,000 pure indigenous peoples were living – there were grave violations against the indigenous ones on a daily basis. They had been removed from their natural environment and they were condemned to live almost destitute. There also existed a subtle practice of extermination. He added that for these reasons Paraguayan workers joined the criticisms that had been made in this regard and demanded that the ILO Conventions on the matter be respected and that the necessary mechanisms be found to respect in full the human rights of all citizens, without any exclusion and discrimination. The Worker member stated that the indigenous communities were persecuted within and expelled from their environment by landowners and business people belonging to the Moon sect. In November 2002, an indigenous man, Bernardo Rojas, accompanied by his son Ruben Rojas, disappeared. He further stated that the enterprise Carlos Casado had recently sold 700,000 hectares of land to the Moon sect in the town of Puerto Casado, including the settlers of this town who lived in this area for many years. The companies of this sect did not accept any trade unions and therefore violated ILO Conventions Nos. 29, 87, 98, 111, 169 and 182.

The speaker added that in 1998, Pope John-Paul II had visited the town of Mariscal Estigarribia in Chaco where he had spoken with the indigenous communities. The Pope had called upon the authorities to respect the culture, the beliefs and the identity of the indigenous communities and to end the violations and discrimination they suffered. The Worker member mentioned that it was inconceivable that in a country of 406,572 kms the environment of indigenous communities could not be respected and that together with the peasants they had to continue fighting for the their land that was guaranteed to them by the national Constitution and the ILO Conventions. He added that the members of the indigenous communities where wandering around in the capital Asuncion, where they were starving, taking drugs and prostituting themselves, and abandoned by the authorities – children, young people and adults alike. He expressed his solidarity with all the aboriginal peoples in the Americas and especially those from Latin America and the Caribbean who were fighting to preserve their identity, their ethnicity and their human condition subject to rights and obligations. He trusted that as a result of the examination of this case before the Committee, the necessary measures would be taken.

**The Worker member of Venezuela** expressed her preoccupations with the violations of the human rights of the indigenous communities in Paraguay. The reports of the Committee of Experts and of this Committee had established failure of the Government to comply with its obligation to consult indigenous communities.

She expressed concern with the lack of information concerning the complaint of the WCL in relation to the Forced Labour Convention, 1930 (No. 29), which pointed to ill-treatment of indigenous workers in certain ranches and to irregularities in the payment of their wages, as well as with the possible elimination of INDI. The speaker hoped that the Government of Paraguay would assume its responsibilities in relation to the protection of the rights of the indigenous persons. These peoples were not only the historical heritage of Latin America, but part of the reality of the world of work, which should be respected. She expressed interest in the technical assistance of the Office in relation to the operation of the tripartite commission under the new Government.

**The Worker member of Uruguay** expressed his preoccupation with the non-observance by the Government of Paraguay of the provisions of Article 6 of the Convention, which had been recognized by the Government representative, as well as with the existence of the project to dissolve the INDI. Referring to the allegations of the WCL of October 1997, he expressed his concern that, as stated by the Government representative, no inspections in fact had been carried out in the ranches concerned because of the difficulty of access, and expressed his doubts as to the Government's actions to improve fundamental aspects of the life of the indigenous communities.

**The Government representative** stated that the main problem in this case consisted of the lack of information. Following the strategic plan of the Government elaborated in September 2002 by the Ministry of Education and Culture and the INDI, the strong and weak points of the institutions would be analysed and coordination would be ensured of actions in favour of indigenous communities. Thematic planning by subject area was realized and a study group in land and natural resources dealt with these questions in all social sectors including the indigenous communities. There was also a Plan of Action of May 2003 for the term of seven years, the financing and the final evaluation of which had been provided for. The speaker indicated that the company Puerto Casado mentioned in the discussion was now named Victoria SA and he himself had visited it following the complaints concerning obstruction to the creation of trade union organizations, which had led to a judicial investigation and the Government's proposal to find a negotiated solution. The inter-institutional commission had been set up by the Defensoria del Pueblo with a view to study this case by the Worker member of Paraguay.

The Government representative stated that the Government would accept the technical assistance of the Office. There should be a coordinated effort of various institutions and NGOs. Budgetary means, however, were insufficient due to the economic recession suffered by his country. The speaker promised to present in writing the actions taken by the Government on the issues in question.

**The Employer members** referred to the final statement of the representative of the Government of Paraguay and regretted again that information necessary for the appropriate examination of this case and for reaching conclusions in this Committee had not been submitted.

**The Worker members** stated that the explanations given by the Government representative confirmed the long list of problems in the application of the Convention. Taking into account the fact that the Government had not communicated a first detailed report, its next report should imperatively be detailed. It would be appropriate if the Office provided technical support to the Government in organizing a technical mission to the areas concerned.

**The Committee took note of the statements made by the Government representative and the discussions that had followed. It also noted that the comments of the Committee of Experts referred in particular to the lack of information on all the questions formulated by the Committee in its previous comments, which primarily related to the practical application of the Convention. The Committee took note that the comments of the Committee of Experts and the statements of certain members had raised the lack of a reply by the Government to the very serious allegations concerning the application of the Convention formulated by the workers' organizations. The Committee reminded the Government that non-compliance with the obligations arising from article 22 of the Constitution hampered the effectiveness with which the supervisory mechanism of the Organization was able to verify the manner in which the provisions of ratified Conventions had been applied. For the said reasons and taking note of detailed information communicated by the Government during the Conference, the Committee urged the Government to take all necessary efforts to adopt measures that would enable it to send on a regular basis, in its next reports, the information requested by the Committee of Experts, including on its comments on the allegations formulated by the workers' organizations in relation to the application of the Convention. The Committee noted the Government's request for technical assistance by the Office to collaborate, together with the organizations concerned, to achieving compliance with the Convention, and asked the Office to do its very best to provide this assistance.**

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

### A. Information concerning Certain Territories

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

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

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

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

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

## Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

**Reports received as of 19 June 2003**

*The table published in the Report of the Committee of Experts, page 731, 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.*

### Angola — 11 reports requested

***(Paragraph 100)***

* 10 reports received: Conventions Nos. 26, 29, 68, 73, 74, 91, 92, 98, 100, 111
* 1 report not received: Convention No. 69

### Azerbaijan — 16 reports requested

* 12 reports received: Conventions Nos. 29, 87, 92, 100, 103, (105), 119, 120, 131, 133, 135, 138
* 4 reports not received: Conventions Nos. (81), 122, 126, (129)

### Barbados — 16 reports requested

* 15 reports received: Conventions Nos. 19, 26, 74, 87, 100, 102, 105, 108, 118, 122, 128, 135, (138), 172, (182)
* 1 report not received: Convention No. 29

### Botswana — 7 reports requested

* All reports received: Conventions Nos. 19, 29, 87, 100, 138, 173, (182)

### Cambodia — 10 reports requested

* 4 reports received: Conventions Nos. (87), (98), (100), (138)
* 6 reports not received: Conventions Nos. 13, 29, (105), (111), 122, (150)

### Chad — 12 reports requested

* 2 reports received: Conventions Nos. 26, 135
* 10 reports not received: Conventions Nos. 29, 87, 98, 100, 111, (132), 144, (151), (173), (182)

### Chile — 14 reports requested

***(Paragraph 100)***

* 9 reports received: Conventions Nos. 9, 29, 100, (121), 122, 144, (151), (161), (182)
* 5 reports not received: Conventions Nos. 87, 103, 131, 135, 138

### China — 6 reports requested

* All reports received: Conventions Nos. 22, 26, 100, 122, 138, 170

### Côte d'Ivoire — 24 reports requested

* 22 reports received: Conventions Nos. 3, 6, 13, 14, 18, 19, 26, 33, 52, 81, 87, 95, 98, 99, 100, 105, 110, 111, 129, 133, 144, (159)
* 2 reports not received: Conventions Nos. 29, 135

### Cuba — 15 reports requested

* All reports received: Conventions Nos. 9, 29, 87, 91, 92, 100, 103, 110, 120, 122, 131, 135, 137, 138, 141

### Cyprus — 16 reports requested

***(Paragraph 100)***

* 13 reports received: Conventions Nos. 23, 87, 92, 95, 100, 111, 114, 119, 122, 135, 138, 141, 147
* 3 reports not received: Conventions Nos. 29, 172, (182)

### Denmark — 24 reports requested

***(Paragraph 100)***

* 17 reports received: Conventions Nos. 9, 19, 29, 87, 92, 98, 100, 105, 111, 122, 126, 134, 135, 138, 141, 163, 169
* 7 reports not received: Conventions Nos. 102, 118, 119, 120, 129, 139, (182)

### Fiji — 16 reports requested

***(Paragraph 96)***

* All reports received: Conventions Nos. 8, 11, 12, 19, 26, 29, 45, 58, 59, 84, 85, 98, 105, 108, (144), (169)

## France

**24 reports requested**

* 23 reports received: Conventions Nos. 3, 9, 29, 42, 63, 68, 87, 92, 100, 120, 122, 126, 129, 131, 133, 134, 135, 137, 138, 141, 145, 146, 152
* 1 report not received: Convention No. 82

## Guinea

**34 reports requested**

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

## Iceland

**9 reports requested**

* All reports received: Conventions Nos. 29, 87, 91, 100, 102, 122, 138, (156), (182)

## Republic of Korea

**5 reports requested**

***(Paragraph 100)***

* All reports received: Conventions Nos. (19), 100, 122, 138, 160

## Kuwait

**9 reports requested**

* All reports received: Conventions Nos. 29, 87, 105, 117, 119, 138, (144), 159, (182)

## Lao People's Democratic Republic

**2 reports requested**

* All reports received: Conventions Nos. 13, 29

## Libyan Arab Jamahiriya

**16 reports requested**

* 6 reports received: Conventions Nos. 14, 29, (87), 95, 100, 103
* 10 reports not received: Conventions Nos. 81, 96, 118, 121, 122, 128, 130, 131, 138, (182)

## Luxembourg

**16 reports requested**

***(Paragraph 100)***

* 11 reports received: Conventions Nos. 9, 13, 19, 26, 68, 87, 92, 98, 100, 105, 166
* 5 reports not received: Conventions Nos. 29, 81, 103, 135, 138

## Madagascar

**12 reports requested**

***(Paragraph 100)***

* 11 reports received: Conventions Nos. 26, 29, 87, 88, 100, 119, 120, 122, (138), 159, 173
* 1 report not received: Convention No. 129

## Republic of Moldova

**14 reports requested**

* All reports received: Conventions Nos. (29), 87, 95, (100), 103, 105, (108), 122, 129, (131), 132, 135, 138, (155)

## Mongolia

**12 reports requested**

***(Paragraphs 89, 96 and 100)***

* 8 reports received: Conventions Nos. 59, 87, 111, 122, (135), (144), (155), (159)
* 4 reports not received: Conventions Nos. 98, 100, 103, 123

## Netherlands

*Aruba*

**35 reports requested**

***(Paragraph 100)***

* All reports received: Conventions Nos. 9, 11, 14, 22, 23, 25, 29, 69, 74, 81, 87, 88, 90, 94, 95, 101, 105, 106, 113, 114, 118, 121, 122, 126, 129, 131, 135, 137, 138, 140, 142, 144, 145, 146, 147

## Niger

**13 reports requested**

* 4 reports received: Conventions Nos. 29, 100, 138, 156
* 9 reports not received: Conventions Nos. 6, 13, 87, 95, 102, 119, 131, 135, (182)

## Pakistan

**5 reports requested**

***(Paragraph 100)***

* 4 reports received: Conventions Nos. 16, 22, 29, 98
* 1 report not received: Convention No. 87

## Panama

**16 reports requested**

* All reports received: Conventions Nos. 3, 9, 26, 29, 30, 68, 87, 92, 100, 110, 119, 120, 122, 126, (138), (182)

## Saint Kitts and Nevis

**8 reports requested**

* 1 report received: Convention No. (182)
* 7 reports not received: Conventions Nos. (29), (87), (98), (100), (105), (111), (144)

## Slovakia

**31 reports requested**

* 25 reports received: Conventions Nos. 14, 19, 26, 77, 78, 87, 89, 90, 99, 100, 102, 111, 122, 123, 124, 128, 130, 138, 142, 148, 159, 163, 164, 173, 176
* 6 reports not received: Conventions Nos. 13, 29, 115, 120, 139, 144

## Slovenia

**30 reports requested**

***(Paragraph 96)***

* 28 reports received: Conventions Nos. 9, 13, 16, 19, 29, 32, 53, 69, 73, 74, 81, 87, 91, 98, 102, 103, 105, 111, 113, 119, 122, 126, 129, 131, 135, 138, 139, (147)
* 2 reports not received: Conventions Nos. 92, 100

## Spain

**27 reports requested**

* All reports received: Conventions Nos. 9, 29, 68, 77, 78, 87, 92, 100, 103, 119, 120, 122, 126, 129, 131, 135, 137, 138, 141, 146, 153, 163, 164, 165, 166, 172, 173

## United Republic of Tanzania

**19 reports requested**

***(Paragraph 100)***

* 12 reports received: Conventions Nos. 11, 12, 16, 17, 29, 63, (87), 95, 131, 138, 140, 170
* 7 reports not received: Conventions Nos. 19, 94, 134, 135, 137, 144, 149

### Tanganyika

**3 reports requested**

***(Paragraph 89)***

* 1 report received: Convention No. 81
* 2 reports not received: Conventions Nos. 45, 101

## Trinidad and Tobago

**6 reports requested**

* 5 reports received: Conventions Nos. 87, 100, 125, (147), (159)
* 1 report not received: Convention No. 29

## Tunisia

**16 reports requested**

***(Paragraph 100)***

* All reports received: Conventions Nos. 19, 26, 29, 81, 87, 91, 99, 100, 111, 118, 119, 120, 122, 127, 138, (182)

## United Kingdom

### *British Virgin Islands*

**5 reports requested**

***(Paragraph 100)***

* 4 reports received: Conventions Nos. 10, 26, 29, 87
* 1 report not received: Convention No. 58

### *St. Helena*

**4 reports requested**

***(Paragraph 100)***

* All reports received: Conventions Nos. 17, 29, 58, 87

## Grand Total

A total of 2,368 reports (article 22) were requested,
of which 1,701 reports (71.83 per cent) were received.

A total of 351 reports (article 35) were requested,
of which 266 reports (75.78 per cent) were received.

## Appendix II. Statistical table of reports on ratified Conventions

(article 22 of the Constitution) **as of 19 June 2003**

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

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

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

### Observations and Information

*(a) Failure to submit instruments to the competent authorities*

**The Worker members** recalled that this obligation constituted a fundamental element of the ILO system. It allowed for the reinforcement of the links between the Organization and the national authorities, the promotion of the ratification of Conventions and the encouragement of a tripartite dialogue at the national level. This was emphasized a few years ago, by this Committee in the course of the discussion on the General Survey on tripartite consultation. On this occasion, the Committee of Experts had specified the nature and modalities of this obligation and had insisted on the fact that submission did not imply for governments an obligation to propose the ratification of Conventions that were under consideration. The significant delay accumulated by certain countries and the difficulties that might arise in overcoming this delay were worrisome. The Committee must insist that governments should respect this obligation and must recall the possibility of seeking the technical assistance of the ILO.

**The Employer members** stated that the obligation to submit the Conventions and Recommendations adopted by the International Labour Conference to their respective national competent authorities should have gone without saying in democratic States. Considering that this constitutional obligation did not contain the additional obligation to ratify or even to recommend the ratification of Conventions, and in comparison with the situation in the past where more less-democratic States had existed, it was even more surprising that today a great number of democratic States did not fully comply with this obligation. They hoped that the situation would improve.

**A Government representative of Cambodia** reiterated his comments on the lack of qualified personnel within the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) and indicated that MOSALVY would speed up the process of submission of Conventions and Recommendations to the competent authorities and build up the capacity of its staff. The delegation of Cambodia requested technical assistance from the Office in order to accomplish this task.

**A Government representative of Latvia** explained that on 10 July 2002, the National Tripartite Cooperation Council had supported the ratification of ILO Conventions Nos. 29, 138, 182 and 183. These Conventions were not, however, submitted to Parliament because they were not translated into the Latvian language. This was also a major hurdle in fulfilling obligations under article 19 of the ILO Constitution. The Government of Latvia expected that the implementation of a project designed to provide assistance for the translation of ILO Conventions and Recommendations into the Latvian language, with the cooperation of the ILO Regional Office for Europe and Central Asia, will help in fulfilling its commitments under article 19 of the ILO Constitution. He drew the attention of the Committee to a mistake on page 718 of Report II (Part 1A) of the Committee of Experts. In the paragraph on Latvia, there was a reference to "Seimas", which was the name for the Parliament of the Republic of Lithuania. The Parliament of the Republic of Latvia was called "Saeima".

**A Government representative of Sierra Leone** reiterated his earlier explanations and appealed for technical assistance from the ILO in training the new labour officers of his Government to better carry out their functions.

**The Employer members** referred to the statements made by governments on the reasons for their non-compliance with their constitutional obligations. They expressed the hope that these governments will submit the adopted instruments in the future, and indicated that there will be rising difficulties and increased workload for the national authorities if submissions were further postponed. They made it clear that the issue was not primarily ratification. It was rather to inform national authorities about instruments adopted at the International Labour Conference. They recommended that the member States concerned should be highlighted in the general part of the report of the Committee.

**The Worker members** agreed with the comments made by the Employer members; the procedure of submission should in fact not pose problems in a democratic country. It was hoped that the situation would improve and that the ILO instruments adopted would be submitted to the competent authorities in the member States.

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

*(b) Information received*

**Grenada.** The ratification of Convention No. 182 was registered on 14 May 2003.

**Kazakhstan.** The ratification of convention No. 182 was registered on 26 February 2003.

**Suriname.** The Government provided detailed information on the submission to the National assembly, on 27 May 2003, of the instruments adopted by the International Labour Conference at the sessions held between 1994 and 2001 (81st to 89th Sessions).

**Syrian Arab Republic.** The Government provided information on the submission to the Presidency of the People's Council (Majlis al-Chaab), on 29 May 2003, of the instruments adopted by the International Labour Conference at its 88th and 89th Sessions (May-June 2000, June 2001).

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

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

**The Worker members** indicated that article 19 of the ILO Constitution stipulated that member States had to communicate reports on unratified Conventions and on Recommendations. These reports served as a basis for the drafting of the General Survey and they also offered an overview of the obstacles to ratification encountered by member States. It also allowed the examination of the relevance of Conventions to the economic and social conditions. This year, the Committee had received 55.29 per cent of reports requested and 25 countries had not met this obligation for the last five years.

**The Employer members** referred to the statement made by the Worker members and to paragraph 136 of the CEACR report. They highlighted that only a very low number of the reports due (55 per cent) for the latest General Survey had been received. Moreover, member States cited in this paragraph of the report of CEACR had not submitted reports for the preparation of General Surveys for the last five years. They stressed that the purpose of General Surveys was to provide information on the general application of a specific Convention and its related Recommendation and to identify obstacles to ratifications in order to better prepare follow-up action by the Organization. As long as member States did not comply with these obligations appropriate steps to improve the situation could not be taken. They were emphatic in requesting that member States should meet their obligations in the future in their own interest.

**A Government representative of Fiji** indicated that, as regards the reports now requested under Conventions Nos. 122 and 142 and Recommendations Nos. 169 and 189, the reports would be submitted to the secretariat shortly. He explained that the delays in submitting the reports were due to several reasons. Priority was given to reporting obligations for ratified Conventions. Fiji had ratified 24 Conventions and first reports for four of these Conventions would be due next year. He indicated that his Government had started work on these reports already. He stated that his Government believed that it had made significant progress in meeting its reporting obligations in respect of ratified Conventions. He drew the Committee's attention to paragraph 107 of the General Report and to the table immediately below this paragraph where Fiji was listed as one of the 24 countries about which the Committee of Experts had expressed satisfaction about certain measures taken by the Government. He recalled that Fiji was one of the 24 individual cases listed for detailed examination at the last session. It was no longer on that list, and it was regarding the Convention discussed last year (Convention No. 98) that the Committee of Experts had expressed its satisfaction. He stated that, as shown in Appendix I of the General Report, Fiji was requested to submit 19 reports on Conventions it had ratified. He said Fiji had met its obligations and had submitted all 19 reports. He regretted that the true picture was not reflected in Appendix II of the General Report because it was indicated that six reports were not received. He reiterated that priority was given to first reports, in particular on Conventions Nos. 144 and 169, first reports for which had been received by the Office as noted in document D.7. He indicated that early this year, the Ministry of Labour was restructured and consequently there was a shortage of staff dealing with reporting obligations on ILO Conventions. New staff was being trained to take on added responsibilities. In addition he indicated that during the early part of this year, technical assistance from the ILO was approved but it did not materialize due to SARS and the embargo on ILO staff travel. After discussion, this would be implemented in September this year and would assist the Labour Ministry in organizing public awareness-raising workshops on ILO Conventions, staff training and reporting obligations on ILO Conventions. It would also assist Fiji in drafting its new Industrial Relations Bill and in adopting the necessary changes and ensuring conformity of national law and practice with the provisions of ILO Conventions. He concluded by assuring the Committee that his Government was treating its reporting obligations seriously and with full commitment despite its limited resources. He hoped that there would be compliance with their reporting obligations in a more timely manner both for ratified and unratified Conventions.

**A Government representative of Guinea** once more indicated the commitment of his Government to undertake all efforts to be in conformity with its international obligations as soon as possible.

**A Government representative of Equatorial Guinea** reiterated that his Government assumed responsibility for the failure to comply with this obligation and indicated that all the reports on unratified Conventions would be provided in the near future.

**A Government representative of Mongolia** apologized for her Government's non-compliance with its reporting obligations and also expressed its concern over the backlog accumulated in this regard. She drew the Committee's attention to the difficulties in translating lengthy ILO Conventions and Recommendations, reports, documents and questionnaires and in informing the constituents properly about them. She hoped for continued ILO technical assistance to enable her Government to increase its capacity in this regard.

**A Government representative of the United Republic of Tanzania** regretted the late submission of reports by her Government and indicated that these would be submitted before the end of the Conference. She said that her Government had been doing its best to meet these obligations and that reports on the fundamental instruments had been sent to the ILO. She attributed the difficulties in meeting these obligations to lack of capacity in her Ministry and stated that the Ministry was being restructured. She indicated a desire for ILO technical assistance to train the new staff of her Ministry.

**The Employer members** finally stated that reports for General Surveys were normally limited to one Convention and a supplemental Recommendation and did not require many resources for preparation. They urged member States to submit already this year the reports needed to prepare the next General Survey. They recalled that the issue was not to make up for past failures but to send future reports on time. They noted that all the member States that had commented on their non-compliance promised to meet their obligations in the future. They hoped that in future sessions such a long discussion on non-compliance by member States with their constitutional obligations would become obsolete.

**The Worker members** observed that the statements of the different Government representatives had not revealed any new elements as regards the reasons for non-respect of this obligation. The Committee must insist that these governments fully respect this constitutional obligation in order to allow the Committee of Experts to carry out complete and detailed General Surveys.

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

*(b) Information received*

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

**Lao People's Democratic Republic.** Since the meeting of the Committee of Experts, the Government has sent reports on unratified Conventions and Recommendations.

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

**Saint Lucia.** Since the meeting of the Committee of Experts, the Government has sent reports on unratified Conventions and Recommendations.

*(c) Reports received on unratified Convention No. 95 and Recommendation No. 85 as of 19 June 2003.*

In addition to the reports listed in Appendix I on page 303 of the Report of the Committee of Experts (Report III, Part1B), reports have subsequently been received from the following countries: Bangladesh, Iceland, Jamaica, Papua New Guinea, Saint Kitts and Nevis.

**INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT**

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