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PART
TWO

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

Report of the Committee on the Application of Standards

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PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

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

The Chairperson made a general statement of introduction in respect of these cases on behalf of the Office as a whole, in light of the fact that the Employers' group and the Workers' group had a common vision on the importance of the obligations under discussion. Indeed, the non-fulfilment of these most basic obligations emanating from the ILO Constitution significantly hindered the work of the Committee of Experts on the Application of Conventions and Recommendations and, consequently, that of this Committee. Indeed, there was no doubt that the failure to report or to submit instruments to the competent authorities in effect undermined the effectiveness of the supervisory system as a whole.

In addition, it had been emphasized in the past that the failure in these constitutional obligations, in particular those relating to ratified Conventions not only impeded the effective examination of these Conventions, but could, moreover, permit Governments to deliberately avoid an examination which would have shown actual failure in the application of the ratified Convention concerned. In particular, failure to supply reports for two years or more regrettably obliged the Committee of Experts to work with outdated information, potentially unaware of developments, even positive, that might have arisen. Where Governments encountered serious difficulties relating to insufficient institutional capacity and infrastructure and communication problems, the Committee hoped that they would be forthcoming in this regard and that the Office would be in a position to provide necessary assistance.

Failure to supply first reports made a mockery of ratification as it did not permit the supervisory machinery to effectively fulfil its basic purpose – that of examining the application of ratified Conventions. Numerous years could go by before the supervisory machinery could adequately review the law and practice in a given country relating to the obligations it had voluntarily undertaken. While the Committee could examine the national legislation even in the absence of an incoming report, the dialogue with the Government, which was of vital importance for the appropriate examination of the various questions by the Committee, would be non-existent.

Failure of a Government to reply to the majority of comments addressed to it by the Committee of Experts effectively nullified all efforts of this body to establish a constructive dialogue aimed at achieving the full application of ratified Conventions.

Failure in the obligation to submit reports defeated the purpose set out in the 2005 revised Memorandum, thus leaving the public unaware of adopted ILO instruments and missing out on the important benefit of public debate on these matters and the constructive effect this might have on promoting measures for their implementation at the domestic level and their ratification.

Finally, reports on unratified Conventions were essential to the future action of the Organization and the Office given that article 19(5)(e) of the ILO Constitution envisaged a review of the law and practice in respect of unratified Conventions, showing the effect that might have been given thereto, but also analysing the difficulties which might prevent or delay ratification. Such reviews enabled the Office to have a better view of areas for technical cooperation and assistance, and they also permitted the Organization to consider possible areas for the revision of standards. In all of the above cases, governments were invited to request the technical assistance of the Office where necessary.

The Worker member of the Netherlands stated that the failure to report by member States was a major blow to the supervisory system, in that it did not allow the Committee of Experts to examine the application of standards in a country, or forced it to do so on the basis of reports which were eight to ten years old. Consideration should be given to putting one or two of these countries on the list of cases to be discussed. This would give the governments concerned an opportunity to update information on cases for which no reports had been submitted.

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

A Government representative of Armenia reiterated his Government's commitment to ILO principles and obligations. He indicated that the first group of reports for 2006 would be submitted within two months. In view of the high number of reports due, they would be grouped according to subject matter. Moreover, the Government was dedicated to clearing the backlog of outstanding reports within the next two years.

A Government representative of the United Kingdom, speaking on behalf of the non-metropolitan territories of Anguilla, Montserrat and St. Helena, apologized for her Government's failure to fully meet the timetable for submitting reports under article 22 of the Constitution, noting that the United Kingdom went to great lengths in its efforts to ensure that all non-metropolitan territories met their reporting obligations in full and within the prescribed time limits. This failure, she explained, was not due to lack of political commitment but rather a question of capacity, since the territories in question were small and largely autonomous island administrations with limited human and financial resources, on which heavy reporting schedules could place a considerable burden. The speaker was pleased to report the request for technical assistance by the Government of Montserrat and to inform the Committee that her Government had engaged in an ongoing discussion with territory governments with a view to ensuring the timely fulfilment of the latter's reporting obligations.

The Committee noted the information and explanations provided by the Government representatives who took the floor. The Committee recalled the fundamental importance of submitting reports on the application of ratified Conventions, not only for their actual communication, but also of doing so within the prescribed time limits. Considering that this obligation constituted the foundation of the supervisory system, the Committee expressed the firm hope that the Governments of Antigua and Barbuda, Armenia, Gambia, Iraq, Liberia, Saint Lucia, Sao Tome and Principe, The former Yugoslav Republic of Macedonia, Turkmenistan, and the United Kingdom (St. Helena) that had not yet submitted reports on the application of ratified Conventions would do so as soon as possible, and 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

A Government representative of Bosnia and Herzegovina indicated that her Government's difficulties in complying with its reporting obligations was due, firstly, to the complexity in the levels of authority in the country and the necessity to engage a number of institutions in the process. With significant assistance from the ILO Office in Sarajevo, a new Department of Labour, Employment and Social Affairs had been created within the Ministry with the task of monitoring the implementation of ILO Conventions and coordinating activities in this respect. In 2005 this had resulted in the Government submitting 22 reports and nine responses to requests and comments. She recalled that Bosnia and Herzegovina had ratified a total of 69 ILO Conventions, most recently Convention No. 144 for which the instrument of ratification would be deposited in the near future. The second main reason for delayed reports was the lack of personnel and proficiency in the methodology of report drafting. She expressed her appreciation for the assistance provided by the ILO Office through the organization of a seminar with a view to enabling the Government to fulfil its task of preparing and submitting the growing numbers of reports for 2007.

A Government representative of Serbia and Montenegro referred to the significant progress made by her Government in discharging its obligations under the Constitution, while emphasising the role of the ILO Budapest Subregional Office in this regard. She was pleased to

inform the Committee of the tripartite seminar on ILO reporting procedures, which had been organized by the ILO Budapest Office in April 2005 and which significantly enhanced the understanding and technical knowledge of standard-related obligations. As a result of this initiative, the speaker pointed to the submission by the Government of Serbia and Montenegro of a total of 25 reports on the application of Conventions and Recommendations and the effect given to ILO instruments on labour inspection. The particularities of the union of Serbia and Montenegro were also a reason for which her Government experienced difficulties in fulfilling its constitutional obligations, and she assured the Committee that the first reports on ratified Conventions would be submitted in the nearest future.

A Government representative of Burundi regretted that his country had not been able to send the first report on the application of Convention No. 182. This failure, which came as a result of a long-standing socio-political crisis that had just been resolved, would be shortly remedied, as the ILO would receive this first report before the end of the present session.

The Committee noted the information and explanations provided by the Government representatives who took the floor. Reiterating the crucial importance of providing first reports on the application of ratified Conventions, the Committee decided to mention the following cases in the appropriate section of the General Report: in particular since 1992 – Liberia (Convention No. 133); since 1995 – Armenia (Convention No. 111) and Kyrgyzstan (Convention No. 133); since 1996 – Armenia (Conventions Nos. 100, 122, 135, 151); since 1998 – Armenia (Convention No. 174) and Equatorial Guinea (Conventions Nos. 68, 92); since 1999 – Turkmenistan (Conventions Nos. 29, 87, 98, 100, 105, 111); since 2001 – Armenia (Convention No. 176) and Kyrgyzstan (Convention No. 105); since 2002 – Bosnia and Herzegovina (Convention No. 105), Gambia (Conventions Nos. 29, 105, 138), Saint Kitts and Nevis (Conventions Nos. 87, 98, 100), Saint Lucia (Conventions Nos. 154, 158, 182); since 2003 – Bosnia and Herzegovina (Convention No. 182), Dominica (Convention No. 182), Gambia (Convention No. 182), Iraq (Conventions Nos. 172, 182), Serbia and Montenegro (Conventions Nos. 24, 25, 27, 113, 114); and since 2004 – Albania (Conventions Nos. 150, 178), Antigua and Barbuda (Conventions Nos. 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161, 182), Burundi (Convention No. 182), Dominica (Conventions Nos. 144, 169), The former Yugoslav Republic of Macedonia (Convention No. 182).

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

A Government representative of Burkina Faso expressed his Government's regret for its failure to submit reports, stating that this failure was due to the presidential and municipal elections which had taken place in 2005 and 2006 respectively and which had interfered with the administration's regular workflow. Acknowledging the importance of international labour standards and with a view to rectifying the current situation, the Government sent in May 2006 a labour inspector to the ILO Training Centre in Turin to follow a specialized course on international labour standards. In closing, the Government representative stated that he had submitted all outstanding reports in response to the observations of the Committee of Experts.

A Government representative of Burundi pointed out that the new Government, which took office in August 2005, attached great importance to its obligations and that it would supply all outstanding reports before the end of the present session.

A Government representative of Cambodia indicated that his country had not made progress in providing replies to comments of the supervisory bodies due to changes in the Ministry of Labour and its staff. Nonetheless, the Ministry had just established a working group in charge of ILO obligations and the situation would soon improve.

A Government representative of Congo expressed his regret for his country's failure to submit the reports due, stating that concrete steps had been taken for the submission of the reports in the near future.

A Government representative of Côte d'Ivoire stated that in the course of this session his Government had submitted reports on all Conventions with the exception of a single Convention.

A Government representative of Eritrea recalled his Government's commitment to the ILO and stated that the Committee of Experts' observations, requests and comments were understood as constructive tools and that every effort was made to respond in time. However, in order for the Government to present sound comments, a wide range of consultations with all the relevant parties had to be carried out, and this had delayed the sending of comments in time. He apologized for the delay and assured that the consultations were nearly terminated and that the comments would be submitted in the near future.

A Government representative of Namibia apologized for his country's failure to fulfil its reporting obligations, explaining that difficulties related to capacity prevented his Government from submitting the reports due. He assured the Committee that his Government was addressing the matter and that it would discharge its obligations within the next two months.

A Government representative of Uganda indicated that he had brought some outstanding reports to Geneva and that they would be submitted to the Office.

A Government representative of San Marino stated that the failure to submit information to the Committee of Experts' requests was caused by an accumulated delay from last two years, with no reports submitted in 2005 and only seven out of 18 submitted in 2004. He assured that the Government recognized the importance of the Organization's functions of supervising international labour standards and assured that there was no political motive behind the delay. They were caused by organizational failings, including limited human resources and lack of a special department responsible for preparing reports. In addition, the Ministry of Labour, the body traditionally responsible for preparing reports for the Committee of Experts, had an increased workload rendering it impossible to assume its reporting obligations to the ILO. However, the speaker ensured that his Government would be able to assume its duty to submit reports in September 2006.

A Government representative of Senegal apologized on behalf of her Government for the failure to submit the requested information to the Committee of Experts and assured that this was not deliberate but resulted from a multitude of internal circumstances which resulted in certain reports being submitted late. Being fully aware of the situation, she assured that her Government would submit the reports without delay after first having submitted them to the social partners, especially after the Government had received technical assistance from the Regional Office in Dakar. Finally, she assured that the number of Conventions ratified by Senegal, including eight fundamental and three priority Conventions, indicated the Government's willingness to fulfil its obligations vis-à-vis the ILO.

A Government representative of the Seychelles apologized for the non-submission of reports, indicating this was due to frequent changes in the top management of the department responsible for coordinating ILO matters. The present administration of the department was committed to fulfilling his Government's obligations and had taken steps to ensure that no lapses in this regard would occur in the future. The majority of reports due would be submitted to the Office later in the day.

A Government representative of Singapore apologized for the late reports, indicating that these were due to the need to coordinate among several agencies. He assured the Committee that future reports would be submitted on time.

A Government representative of Togo stated that the failure to submit reports on ratified and non-ratified Conventions should not be considered as a sign of ill will from his Government vis-à-vis the Organization but as a result of institutional shortcomings and lacking human resources. For example, Togo had only 15 labour inspectors, and at the Ministry of Labour only three officials were in charge of coordinating the work. It was therefore difficult to be up to date in submitting the reports. Currently around 15 additional labour inspectors were being trained, but in order to reinforce the labour administration's capacities, the speaker wished for two professionals to be trained by the Office in order to fulfil the reporting obligations.

The Committee noted the information and explanations provided by the Government representatives who took the floor. The Committee emphasized the great importance, for the continuation of dialogue, of providing clear, relevant and full information. It reiterated that this was part of the constitutional obligation to supply reports. In this respect, the Committee expressed its great concern at the high number of cases of failure to supply information in reply to comments made by the Committee of Experts. It reiterated that governments could request the assistance of the ILO to overcome any difficulties they might face. The Committee urged the Governments concerned, and particularly Antigua and Barbuda, Belize, Burkina Faso, Cambodia, Comoros, Congo, Equatorial Guinea, Eritrea, Gambia, Iraq, Kazakhstan, Kyrgyzstan, Liberia, Namibia, Saint Lucia, San Marino, Sao Tome and Principe, Senegal, Seychelles, Singapore, The former Yugoslav Republic of Macedonia, Togo, United Kingdom (Anguilla, Montserrat, St. Helena) and Zambia, to make every effort to provide the requested information as soon as possible. The Committee decided to mention these cases in the appropriate section of its General Report.

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

Afghanistan. Since the meeting of the Committee of Experts, the Government has sent all of the reports due concerning the application of ratified Conventions, replies to most of the Committee's comments and the reports due on unratified Conventions, unratified Protocols and Recommendations.

Armenia. The ratification of Convention No. 182, adopted at the 87th Session of the Conference (1999), was registered on 2 January 2006.

Bahamas. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 147 and replies to most of the Committee's comments.

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

Bosnia and Herzegovina. 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 of the Report: Appendix I.

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

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

Cambodia. The ratification of Convention No. 182, adopted at the 87th Session of the Conference (1999), was registered on 14 March 2006.

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

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

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

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

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

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

Grenada. Since the meeting of the Committee of Experts, the Government has sent all of the reports due concerning the application of ratified Conventions, as well as replies to most of the Committee's comments.

Guyana. Since the meeting of the Committee of Experts, the Government has sent all of the reports due concerning the application of ratified Conventions, as well as replies to most of the Committee's comments.

Lao People's Democratic Republic. Since the meeting of the Committee of Experts, the Government has sent all of the reports due concerning the application of ratified Conventions, as well as replies to all of the Committee's comments.

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

Netherlands (Aruba). Since the meeting of the Committee of Experts, the Government has sent all of the reports due concerning the application of ratified Conventions, as well as replies to most of the Committee's comments.

Paraguay. Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions, the first report on the application of Convention No. 182, as well as replies to most of the Committee's comments.

Swaziland. 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 replies to all of the Committee's comments.

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

Uganda. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Conventions No. 182, as well as replies to most of the Committee's comments.

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

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

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

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Djibouti (ratification: 1978). **A Government representative** recalled the historical context, which had led to the current revision of the Labour Code. Djibouti, linguistically enclosed in the horn of Africa, had inherited an advantageous legislation from its colonial past, but this legislation had been drawn up to profit only one category of workers, the expatriate workers. It was not adapted to modern economic realities, nor did it correspond to the requirements of the World Bank and the International Monetary Fund, and it was an obstacle to foreign investors and a dilemma for the State. A first revision was undertaken in 1997 through Act No. 140. The labour market was liberalized, the guaranteed interoccupational minimum wage was abolished, as was the procedure for prior administrative authorization for dismissal for economic reasons. This reform was followed by a thorough revision that lasted for seven years, taking into consideration the comments from the partners, employers and trade unions, with the support from the ILO and the Arab Labour Organization (ALO). This new Labour Code, adopted on 25 December 2005, was promulgated on 28 January 2006, and a copy would be transmitted to the ILO. The new Code was adapted to the context of globalization, meaning that the State no longer intervened in the setting of minimum wages or in the procedure of hiring labour, except in the case of foreign workers. The State intervened less in the settlement of collective labour disputes, leaving this task to a tripartite arbitration committee. The State left the field to the social partners to discuss through dialogue and negotiation but, at the same time, recognized the role of trade unions, trade unionists and the workers' delegates at the enterprise level. During a period of three years, the social partners would be entirely free to revise collective agreements and the Government hoped that minimum wages, particularly at the branch level, would be reintroduced through these revisions.

The Employer members, noting the information supplied by the Government representative concerning the history leading up to the changes in the labour law, expressed their astonishment that the new Labour Code had been adopted only in 2006 and had not yet been sent to the secretariat. In their view, the Convention required engagement, not only by the Government, but by the social partners. They recalled that the General Survey on minimum wages of 1992, in its paragraph 396, had stressed the importance of ILO standards on minimum wage in ensuring a minimum wage to workers that would enable them to meet their subsistence needs and those of their families adequately in the context of the economic and social conditions of the country in which they lived. These standards, therefore, already took into account the economic and social context of the country. The explanations provided by the Government representative that Djibouti was seeking greater room for supply and demand in the setting of wages and that this would enable greater wage negotiation were not satisfactory. Similarly, citing the Labour Code without supplying it to the Committee of Experts for examination was also an unsatisfactory response. The Employer members hoped that the Government would provide with its next report practical information concerning the branches of economic activity and the various categories of workers covered by collective agreements, copies of recent collective agreements containing clauses fixing minimum wages, and the approximate number of workers whose remuneration was not regulated by collective agreement.

The Worker members stated that this case was both a simple and complex one. It was simple because Article 1 of the Convention stipulated that, in the absence of collective agreement, the Government was bound to create or maintain machinery whereby minimum rates of wages could be fixed. The amendment to the Labour Code of 1997 abolished the minimum pay rate and the wage-fixing machinery, and there was no longer any method or a minimum wage and the law of supply and demand applied. Due to lack of information, the sectors or categories of workers eventually covered by a collective agreement were not known. Likewise, under Articles 2 and 3 of the Convention, consultations with employers' and workers' organizations were obligatory for freely deciding sectors and mechanisms for the establishment of minimum wages. The case was a complex issue because this basic condition was related to both freedom of association within the meaning of Convention No. 87 (without trade unions there was no consultation) and also to Convention No. 98, which regulated, in particular, freedom to bargain collectively, a freedom as important for prior consultation as for the contractual aspects of Convention No. 26. Taking this into consideration, together with the comments of the Committee of Experts, it was necessary to examine the application of these two fundamental Conventions. And yet, the information and reports received led to believe that freedom of association and collective bargaining were not guaranteed in Djibouti. The Worker members, therefore, suggested that these aspects should be the subject of a coordinated and global examination.

The Worker member of Senegal stated that Djibouti's violation of Convention No. 26 should be added to its long list of numerous violations of international labour standards. He highlighted the Government's attacks on the rights of trade unionists, who where victims of abusive dismissals, judicial harassment and arbitrary arrests. The new Labour Code of 2006 did not contain any provisions with respect to minimum wages and had not taken account of the comments by the Committee of Experts. It had been adopted unanimously by the National Assembly due to the fact that the party in power controlled all the seats. However, no amendments proposed by trade unions had been retained or incorporated into the text. The speaker stressed that the Government should put an end to its anti-union repression, reinstate all unlawfully dismissed trade unionists, as it had agreed to do in the peace agreement concluded in 2001, put in place a legal framework for social dialogue and, finally, respect all international commitments it had undertaken.

An observer representing the International Federation for Human Rights (FIDH), speaking with the authorization of the Officers of the Committee, expressed her deep concern about the respect for the fixing of minimum wages in Djibouti, and the capacity of the social partners to set these minimum wages. In 1997, the guaranteed interoccupational minimum wage was abolished and the new Labour Code of 28 January 2006 confirmed this policy, leaving the minimum wage outside of any legislation other than enterprise agreements or collective agreements. Many of these collective agreements were very old and the majority had not been renewed. Therefore, the wages offered by the enterprises to employees were generally accepted in view of the high unemployment rate plaguing the country, which did not allow them to refuse. Thus, while the Convention foresaw consultation and agreement by employers' and workers' organizations on the establishment of a minimum wage-fixing mechanism, the trade unions generally did not participate in the elaboration of collective agreements or enterprise agreements since these had not been renegotiated since the independence of the country in 1976. Moreover, in the last ten years in Djibouti, the independent trade unions were the subject of constant and serious attacks, ranging from police and judicial harassment to dismissal and even the imprisonment of trade union leaders. This was the case in February 2006, when four leaders of the Labour Union of Djibouti (UDT), the country's most representative trade union, were imprisoned for a month, and they were currently being prosecuted for "spying for a foreign power" and hence deprived of their passports. It was impossible to discuss with social partners that had been put into prison. The capacity of the trade unions to play the role, which the Convention attributed to them was thus very limited, especially in light of the restrictions that the new Labour Code set for the creation of unions by reinforcing the requirements of prior authorization. These new provisions allowed the authorities to choose the social partners with which to negotiate. This became manifest with the creation in March 2006, of a union of maritime service and transportation personnel, which was established to compete with existing unions affiliated with the UDT.

The Government representative replied that instead of discussing the fixing of minimum wage, the preceding speakers had engaged in political diatribe. He stated that he had heard similar allegations made by the ICFTU on another occasion at which he had asked it to name its sources. He was told that these sources were based on written information. In both instances, he invited trade unions and non-governmental organizations to come to Djibouti to carry out their inquiries on the spot. He emphasized that in the elaboration of the Labour Code, the Government had consulted the ILO and the ALO, as well as the social partners. Moreover, a mission of trade unions from the United States had visited the country and had been warmly received. The Government felt it had to attract foreign investors and, at the same time, continue to protect social rights. Djibouti was not an exceptional case since many countries faced the same dilemma. In an effort to solve this dilemma, the Government had preferred to explain to the social partners the reasons that had led to the adoption of the new Labour Code and to leave to them the free negotiation of the minimum wage. The examples mentioned by the International Federation for Human Rights involved well-known trade unionists who were also politicians, whereas the law did not allow persons to act in the double capacity of trade unionists and politicians. The Government representative reiterated his invitation to all interested organizations to come and carry out inquiries in his country.

The Employer members stated that the Government representative had not succeeded in his effort to demonstrate to the Conference Committee that his country was seeking to meet its obligations under the Convention, and requested that the Government submit a written report to this Committee on further measures it intended to take. In view of the fact that the explanation provided by the Government representative sought to draw attention to the difficulties encountered by the country, the Employer members urged the Government to seek

technical assistance in the form of expertise and guidance on the manner in which these difficulties could be overcome, with the ultimate aim of bringing national legislation into line with the Convention.

The Worker members were astonished that the Government representative, while claiming his country to be open, had questioned the accuracy of telling and overpowering information presented on the question of persecution of trade unionists. Why was it then that in April, two months ago, a representative from the ICFTU and another from the FIDH were refused entrance into the country at the airport of Djibouti, while a representative from the International Labour Office on mission in the country was expelled? It followed from the discussion that the Government had not taken any measures to establish a minimum wage-fixing machinery outside of collective agreements, and that it had failed to respect the requirement for prior consultation with the social partners foreseen in the provisions of Conventions Nos. 87 and 98. The Government should cease taking coercive action against trade unionists and, in particular, against the UDT, so that a climate conducive to voluntary collective bargaining could be established as soon as possible. It should also take, as a matter of priority, the measures necessary to ensure in law and practice the principles on freedom of association, reflected in Articles 2 and 3 of Convention No. 26, and to amend the part of the new Labour Code that set forth requirements for the establishment of trade unions. The Committee of Experts should re-examine the interrelationship between the principles underlying the minimum wage-fixing machinery set out in Convention No. 26 and the right to free collective bargaining enshrined in Conventions Nos. 87 and 98.

The Committee noted the oral statement of the Government representative and the discussion that followed. It noted, in particular, the explanations provided by the Government concerning the reasons which led to the amendment of the Labour Code in 1997, and to the abolition of the system of guaranteed interoccupational minimum wage (SMIG). According to the Government, the need to adapt to the realities of a globalized economy and the wish to attract foreign investment rendered the liberalization of the labour legislation necessary.

The Committee further noted that a new Labour Code was promulgated in January 2006, which made no reference to statutory minimum wage and provided that wages were to be fixed through collective agreements, enterprise agreements or individual agreements. The Government, however, indicated that the social partners had the possibility to reintroduce a system of minimum wage rates at the branch level, if they so wished.

The Committee recalled that collective bargaining constituted a minimum wage-fixing mechanism within the meaning of the Convention only if it gave full effect to certain basic principles, to be applied irrespective of the form or type of the wage-fixing system, namely that (i) minimum wages should have force of law; (ii) they could not be subject to abatement; (iii) failure to apply them should be appropriately penalized; and (iv) the social partners should be fully consulted at all stages of the minimum wage-fixing process. The Committee, therefore, expected the Government to take the necessary steps to ensure that the minimum wage rates determined by means of collective agreements were legally binding and could not be lowered, and that their non-observance was subject to sanctions. In this connection, the Committee emphasized the close interrelationship between the Convention's underlying principle of full consultation and direct participation of the social partners in the determination of the minimum wage and the overriding principles of freedom of association and collective bargaining.

Moreover, the Committee drew the Government's attention to the fact that the Convention called for the establishment of machinery whereby minimum rates of pay could be fixed for workers employed in those trades in which no arrangements existed for the effective regulation of minimum wage levels through collective bargaining and, as a result, wages were exceptionally low. It, therefore, expressed its concern that by dismantling the national minimum wage system, the Government would have deprived large numbers of workers who might not be covered by collective agreements from any protection with regard to minimum acceptable wage levels.

The Committee asked the Government to communicate detailed information to the Committee of Experts for examination at its next session concerning the sectors or branches of economic activity and the different categories of workers covered by collective agreements, as well as the approximate number of workers whose remuneration was not regulated by means of collective agreement.

The Committee emphasized that the primary function of the minimum wage system envisaged in the Convention was to serve as a measure of social protection and poverty reduction ensuring decent minimum wage levels for the low-paid, unskilled workers, and accordingly encouraged the Government to take all appropriate measures to ensure that full effect was given to the Convention.

Convention No. 29: Forced Labour, 1930

Myanmar (ratification: 1955). **See part three.**

Uganda (ratification: 1963). **A Government representative** stated that his Government was committed to addressing the problems raised by the Committee of Experts. Regarding the abductions of children by the Lords' Resistance Army (LRA), the Government was making efforts to bring this situation under control, and would turn over the leadership of the LRA to the International Criminal Court once apprehended. Furthermore, Uganda had ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and had taken steps to implement it. The parties to the armed conflict were being sensitized to their responsibilities. The speaker further stated that Uganda had a robust legal framework to fight forced labour. Article 25 of the Constitution prohibited torture and cruel, inhuman or degrading treatment or punishment. The Children Act of 2000 also provided for the protection of children from violence and abuse. The new Employment Act which had just received Presidential assent also prohibited forced labour. Moreover, there was a joint effort by the Government, civil society, development partners and NGOs to improve the human rights situation in the country. The Uganda Human Rights Commission investigated complaints and promoted public awareness of human rights. Furthermore, a psychosocial support programme for the care of children in conflict areas had been expanded to cover numerous districts in the conflict areas. Similarly, a national core group for psychosocial support had been established with representation from Government, districts, NGOs and donors. This body was responsible for advocacy against killing, abduction and conflict-related child abuse. In addition, the speaker pointed out that Save the Children from Denmark and Sweden, in collaboration with the Uganda People's Defence Force (UPDF) and the Gulu Support Children Organization (GUSCO), had been implementing a project within the UPDF which included training officers in the UPDF's Child Protection Unit and in the UPDF leadership. There was also a children's desk within the UPDF Fourth Division Headquarters that had been elevated to a unit.

Finally, the speaker underlined recent efforts to bring about peace in the region. A Joint Forum for Peace had been formed in the Kitgum District with the aim of seeking a peaceful resolution of the conflict in the north. The Governments of Uganda and Sudan had signed an agreement in Nairobi in December 1999 for the return of children abducted from Uganda and taken to Sudan by the LRA. As a result of these efforts, and due to pressure from the UPDF in the north, no serious cases of abduction had been reported in the last six months. Internally displaced persons had started returning to their homes. Children that had been affected by the conflict would be reintegrated into their communities and provided schooling and skills training for future livelihood. Turning to the question of the Armed Forces (Conditions of Service) (Officers) Regulations, 1969, the speaker pointed out that these regulations had been replaced by the National Resistance Army (Conditions of Service) (Officers) Regulations (No. 6 of 1993). Under section 28(1) of these regulations, the Commission Board could permit army officers to resign their commission in writing at any stage of service or to retire on pension after a minimum of 13 years of reckonable service. Officers were entitled to retrenchment benefits on completion of three years of service under regulation 30(1). Retirement could therefore be initiated by officers by applying and giving reasons why they intended to quit. The Board would consider the reasons and, if adequate, give permission to do so. The speaker also noted that the Armed Forces (Conditions of Service) (Men) Regulations of 1969 had been repealed by the National Resistance Army (Conditions of Service) (Men) Regulations (No. 7 of 1993), which prohibited persons under 18 years of age or above 30 to be employed in the armed forces. Consequently children were not allowed in the Ugandan Army. Finally, the speaker stated that the Prison Act requested by the Committee of Experts would be supplied to the Office, as well as other legislation.

The Worker members emphasized that it was the first time that the Committee had examined the case of the application of Convention No. 29 by Uganda. The Committee of Experts had been raising the same concerns about the application of the Convention for several years. Its comments concerned five points, namely: the situation of child soldiers in the northern part of the country; the compulsory placement of unemployed workers in rural areas on agricultural enterprises; the right of career members of the armed forces to resign from a voluntary engagement in the army; the mandatory term of service of men under the apparent age of 18 years enrolled in the army; and the employment of prisoners. With regard to the situation of child soldiers in the northern part of the country, in its last reports the Government had indicated the measures that it had taken to protect children against abduction and enrolment in militias, such as the Lords' Resistance Army (LRA). It had also indicated that it had ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and had taken other action, including legislative measures. However, although the Government maintained that, for the past six months, no children had been enrolled, forced to work or serve as sentries, soldiers or concubines, or been subjected to acts of violence, rape or even murder, the problems that persisted in the field were so widespread and so serious that it was difficult to understand why the Government had not given effect to the recommendations of the Committee of Experts. The Government had also indicated that it had taken action to raise public

awareness of the forced labour of children. These measures were insufficient. The rules had to be enforced and the perpetrators of such practices punished. In this respect, the Government representative had referred to the recent adoption of an amnesty law relating to forced labour. However, the objective was to eliminate forced labour and this legislation, although important, did not appear to be a measure that would achieve this objective. Furthermore, the Government representative had referred to the work of non-governmental and other civil society organizations. It was, however, for the Government to meet its obligations and it could barely do so by simply referring to the work of non-governmental organizations. It was therefore urgent for the Government to take tangible steps to ensure that penal sanctions were imposed on those responsible for the exaction of forced labour, in accordance with Article 25 of the Convention.

With regard to the placement of unemployed workers in rural areas on agricultural enterprises to discharge certain services provided for in the Decree of 1975, the Government had announced that the Decree would be repealed in the near future. However, despite previous requests, the Government had still not communicated the text repealing the Decree and had only reiterated the information supplied previously to the Committee of Experts. Finally, with regard to the right of career members of the armed services to resign from a voluntary engagement in the army, the mandatory term of service of persons under the apparent age of 18 years enrolled in the army and the employment of prisoners, the Government representative had also stated that legislation had been adopted and would be supplied to the Office. In view of all the questions that remained unanswered, the Worker members urged the Government to explain why information that was supposed to be available had still not been supplied to the Office.

The Employer members agreed with the Worker members that the information provided by the Government had left many questions unanswered. They noted that the Government had not provided its report on the application of the Convention and that it was on the list of cases, in part, for this reason. Furthermore, since 1992, the case had not been discussed in the Conference Committee. However, in light of the Committee of Experts' observation regarding the exaction of forced labour from children in connection with armed conflict, it appeared to be time for the Conference Committee to discuss it. They emphasized that the Convention required the suppression of the use of forced labour in all forms, and that illegal practices had to be made a punishable offence. It also required that the penalties imposed by law were adequate and strictly enforced. For the purpose of the Convention, forced labour meant all work or service which was exacted from any person under the menace of any penalty and for which the said person had not offered himself voluntarily. Uganda had ratified Convention No. 29 in 1963 and was therefore bound by its requirements. The Employer members further indicated that in northern Uganda, the LRA had engaged in the practice of abducting children and forcing them to perform a number of functions, ranging from active combat to various support roles in armed conflict. For abducted girls, this had involved sexual exploitation by LRA commanders. The Committee of Experts had noted that these abducted children had been forced to work as guards, soldiers and concubines for the LRA. The abductions had also been associated with the murder, assault and rape of these children. In their findings, the Committee of Experts had referred to UNICEF's report of 1998, which indicated that over 14,000 children had been abducted in northern Uganda. More recently, the ILO Global Report of 2005 had estimated that a total of approximately 20,000 children had been abducted in northern Uganda. The Employer members welcomed the information provided by the Government representative and noted with interest the Government's efforts to improve the situation of forced labour in connection with the abduction of children for use in armed conflict. More specifically, they noted with interest that the Government had ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000), and that it had undertaken awareness campaigns on this Protocol.

Nevertheless, the Employer members also noted with concern that the Government had not provided the ILO with a report on Convention No. 29 this year outlining the measures that it had taken to ensure its compliance with the Convention. The work of the Conference Committee was based on the factual findings of the Committee of Experts after reviewing the information available. However, even taking into account the information provided by the Government representative, it had to be concluded that there was not enough information available to assess whether progress had been made regarding the very serious situation of abductions of children for use in armed conflict. Secondly, the continued existence of the practices of the abduction and exaction of forced labour of children in connection with armed conflict constituted a serious violation of the Convention. The Government representative had referred to the reduction in abductions, but not to its elimination. This was simply not good enough. Therefore, while having noted the efforts made by the Government to eliminate these practices, the Employer members urged the Government to take immediate measures to eliminate all practices of forced labour, with specific regard to the forced labour of children in connection with armed conflict. They also urged the Government to ensure that the penalties in connection with the exaction of forced labour were strictly enforced. Finally, they hoped that the Government would make every effort to provide a full report regarding the progress made in the implementation of the measures that the Government representative had described.

The Worker member of Swaziland recalled that Uganda had ratified the ILO Conventions concerning forced labour over 40 years ago. He emphasized that the ratification of a Convention was a voluntary decision through which a ratifying State committed itself to enact and enforce in law and in practice the provisions of this Convention. It was therefore unacceptable that the same Government would deliberately abdicate its responsibility for submitting annual reports to the ILO, as reflected in the comments of the Committee of Experts. Forced labour was not only degrading, dehumanizing and unjust; it also went against every principle of the ILO Decent Work Agenda, which was at the heart of the Organization. It was saddening that the comments of the Committee of Experts concerned not only the exaction of forced labour from adults, but also from children between the ages of 8 and 15 years who were also subjected to rape and sexual molestation. As the Government had ratified both ILO Conventions concerning forced labour and the Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, it was shocking that in 1975 the Government had passed a decree prohibiting forced labour victims from leaving farms without the consent of the perpetrators. It was also a matter of concern that only four years after the ratification of the forced labour instruments, the Government had passed the Public Order and Security Act of 1967, which authorized the Executive to deny individuals their freedom of association and assembly, clearly embarking on a state of emergency and the direct suppression of the fundamental rights of workers and the people of Uganda. Sections 54(2)(c), 55 and 56 of the Penal Code gave the Minister arbitrary powers to ban the right of assembly. Furthermore, the Trade Dispute Act of 1964 banned the right of essential service workers from resigning unless by consent. Denial of such rights was tantamount to legitimizing forced labour, which made a mockery of the ratification of the forced labour Conventions. He therefore called upon the Government: to submit all the annual reports on all ratified Conventions, and in particular Conventions Nos. 29 and 105, to the ILO; to prosecute the perpetrators of the abduction of children and violators of the forced labour Conventions; to enforce in law and in practice all the Conventions, and particularly ILO Conventions Nos. 29 and 105, as well as the United Nations Protocol; to repeal the Public Order and Security Act of 1967, sections 54-56 of the Penal Code, and section 16(1)(a) of the Trade Dispute Act of 1964; and to resuscitate the programme of rehabilitating and reuniting abducted children with their families.

The Worker member of Senegal indicated that the Government of Uganda had been called before the Committee to answer for grave violations of Convention No. 29. Notwithstanding the new information supplied by the Government representative, the situation described by the Committee of Experts in its observation, namely the LRA abducting boys to convert them into child soldiers and girls into sexual slaves, still persisted. Thus, out of fear of kidnapping, over 25,000 children left their villages at night, walked to the town and gathered in shelters managed by humanitarian organizations. The next morning, they returned to their villages to go to school. An explanation was needed as to why a competent army had not been able to repulse a guerrilla force of a few hundred rebels, of whom 80 per cent were child soldiers. The Government needed to demonstrate a real commitment to bringing to an end a serious violation of Convention No. 29. In its report in 2000, the Government had indicated that abductions were occurring in the north of the country. Furthermore, the International Criminal Court had received a complaint communicated by the authorities and had issued an arrest warrant against the LRA. The Government needed to take the necessary measures to reintegrate the abducted children into children's centres. Moreover, the problems of the employment of prisoners and that of the duration of the engagement of those enrolled in the army under the apparent age of 18 years were matters of concern, but the Government had not provided information on them. The Government needed to take measures so that its communication with the Committee of Experts was transparent, as this was the only way of ensuring the application of standards. He indicated that the information provided by Government representative concerning the promulgation of new laws for the elimination of forced labour needed to be verified. The Government needed to take appropriate measures to put an end to practices that were contrary to the Convention and to ensure, in conformity with Article 25 of the Convention, that those guilty of the imposition of forced labour were punished for penal offence. The examination of this case by the Committee of Experts was justified as the Government had not resolved the issue of force labour in Uganda which represented a veritable human tragedy that affected both girls and boys.

The Government representative thanked the members of the Committee for their comments, indicating that he would be pleased to provide additional information. He apologized for the late submission of the Government's report, which had been received by the Office on 2 June 2006. This report contained information on ILO Conventions Nos. 17, 26, 29, 81, 105, 123, 138, 143, 159 and 182. He also apologized for the fact that copies of the relevant legislation had not been available, and indicated that they would be provided during the

Committee's session. He indicated that his first intervention had been confined to the question of the forced labour of children in armed conflict and the abduction of these children by the Lords' Resistance Army (LRA). Concerning the verification of the information that he had provided, he indicated that a joint monitoring and verification team had been established, composed of government representatives, as well as other relevant partners. This team was now operating in the affected areas. On the question of sanctions imposed on persons who had exacted forced labour, he indicated that the Amnesty law had been passed in 2000 as part of the peace process and had been extended until May 2008, while the case before the International Criminal Court was still standing. In addition, he informed the Committee that the Decree concerning workers in farm settlements was a "dead law" with no single case affected out of it, and that the current Parliament intended to repeal it.

With regard to the persistence of the practice of abductions, he referred to the Government's continued efforts at the international, regional and national levels in this regard, as well as in the areas where the abductions were perpetrated. Furthermore, he informed the Committee that following the re-establishment of peace, internally displaced persons (IDPs) were being resettled in the Lira, Apac and Soroti and Katakwi districts, and expressed the hope that similar resettlement efforts could also be carried out in other areas. This responded directly to the recommendation made to the Government to ensure the total elimination of forced labour. On the question of appropriate penal sanctions, he indicated that rebels who did not abide by the Amnesty law would definitely be sanctioned. He also informed the Committee that the integration of formerly abducted children was an ongoing process, through various programmes on the ground. International NGOs were also supporting the Government in the integration of these children back into their communities. He concluded by informing the Committee that his Government was committed to providing more detailed information at an appropriate time, and had taken note of the information required by the Committee.

The Employer members thanked the Government representative for his reply to the various issues raised, noting the Government's efforts to improve the situation of forced labour, with particular reference to the abduction of children for use in armed conflict. They suggested that the Committee should note in its conclusions the measures taken by the Government to address the question of forced labour in armed conflict. However, the conclusions should also note the continued existence of the practice of the abduction of children for the purposes of exacting forced labour, which continued to constitute a gross violation of the Convention. They noted the reference by the Government representative to the reintegration of children in conflict and non-conflict areas, the progress made in the development of national legislation and its continued commitment to the peace process. However, they also expressed disappointment that the Government representative had referred to the reduction of forced labour, not the elimination of forced labour, and that the Government did not provide more information regarding the efforts made to enforce penalties on those who were responsible for the exaction of forced labour. Therefore, they suggested that the Committee repeat its request that the Government eliminate all forced labour, in particular the use of children in armed conflict. The Employer members suggested that in its conclusions the Committee should urge the Government to ensure the strict enforcement of penalties against those persons who had exacted forced labour. They also expressed the hope that the Government would provide a full report to the Committee of Experts on the progress achieved in the implementation of the Convention.

The Worker members stated that the situation of child soldiers in the north of Uganda remained a matter of great concern. Despite the Government's statements, it was impossible to verify whether measures had really been taken to resolve the problem and to ensure the reintegration of child soldiers. As it had been requested by the Committee of Experts in its observation, the Government needed to take proactive measures, in accordance with Article 25 of the Convention. With regard to the other issues raised by the Committee of Experts, the situation remained unchanged. The Government continued to make statements without any firm indication that the situation had improved. The Government's attitude, which was to confine itself to making statements without bothering to put them into effect, could lead to the belief that it did not take the work of the Committee, or its own commitments, seriously. On innumerable occasions the Committee had criticized this type of attitude, which was contrary to the spirit of cooperation that existed within the Organization. It was to be hoped that the Government would provide the Committee of Experts with the information supplied orally by the Government representative, as well as any other information that would enable it to verify the Government's statements so that it could undertake a complete examination of the situation in the country.

The Committee took note of the information provided by the Government representative and of the discussion which ensued. It expressed its deep concern about the situation of the armed conflict in the northern part of the country, associated with continuing cases of abduction of thousands of children, who were forced to provide work and services, such abductions being connected with killings, beatings and rape of these children, who were forced to become a part of the conflict, either as child soldiers, human shields and hostages, or victims of sexual exploitation.

The Committee took note of the Government's statement concerning its commitment to put an end to these practices and, in particular, of the joint effort taken by the Government, civil society, development partners and NGOs to improve the human rights situation in the country. It took note of the information concerning certain legislative measures, such as the adoption of the Amnesty Law and the prohibition of forced labour in the new Employment Act, as well as the positive measures taken, such as sensitization of communities, political and military authorities in the armed conflict areas about proper handling of the children; sensitization on peaceful conflict resolution and ensuring the rights of the child; initiation of the Psychological Support Programme for the care of children in conflict areas and their families. The Committee took note of the information concerning the project implemented jointly by Save the Children (Denmark) and Save the Children (Sweden) in collaboration with the Uganda People's Defence Force (UPDF), with the aim of promoting the observance of the rights of children affected by armed conflict. It also took note of the ratification by the Government of the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002, and of the fact that the Government had communicated its first report on the application of Convention No. 182. The Committee welcomed the signing by the Governments of Uganda and Sudan of the agreement in Nairobi for the return of children abducted from northern Uganda, as well as the creation of the Joint Forum for Peace in Kitgum district with the aim of seeking a peaceful resolution of the conflict in the north.

While noting the Government's statement concerning its willingness to combat these practices, as well as the positive measures taken, the Committee was bound to observe that the continuing existence of the practices of abductions and the exaction of forced labour constituted gross violations of the Convention, since the victims were forced to perform labour for which they had not offered themselves voluntarily, under extremely harsh conditions combined with ill-treatment which could include torture and death, as well as sexual exploitation. The Conference Committee therefore urged the Government, as the Committee of Experts has done on several occasions, to take effective and prompt action, not just to reduce, but to eliminate these practices and to ensure that, in accordance with the Convention, forced labour was punishable as a penal offence and that the penalties imposed by law were strictly enforced, and to supply detailed information on the law enforcement for the examination by the Committee of Experts.

As regards other measures taken by the Government to improve its legislation, in particular, provisions governing resignation from the armed forces, the information provided by the Government representative would be transmitted to the Committee of Experts for examination.

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

Bosnia and Herzegovina (ratification: 1993). **A Government representative** noted that three cases had been examined by the Committee on Freedom of Association, namely Case No. 2053 concerning the registration of the Associated Workers' Trade Union of Bosnia and Herzegovina, Case No. 2140 concerning the registration of the Employers of the Federation of Bosnia and Herzegovina and the Employers' Confederation of Republika Srpska and Case No. 2225 concerning the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina. His Government had recently provided replies to the observations and direct requests made by the Committee of Experts with respect to several Conventions, including Convention No. 87. Concerning the application of Convention No. 87 and the three above-mentioned cases, the Government had informed the Committee on Freedom of Association that Cases Nos. 2053 and 2140 had been resolved, namely that the Associated Workers' Trade Union of Bosnia and Herzegovina and the Employers of the Federation of Bosnia and Herzegovina and the Employers' Confederation of Republika Srpska had been registered almost two years ago. With regard to Case No. 2225, his Government wished to inform the Committee that the case was before the Appeals Commission of the Council of Ministers of Bosnia and Herzegovina. In conclusion, he indicated that the main finding of the participants of the seminars on reporting held recently with the technical assistance of the ILO was the need to initiate the procedure to amend the Law on Associations and Foundations of Bosnia and Herzegovina so as to ensure that it was in line with Convention No. 87 and with the recommendations and comments made by the Committee of Experts.

The Worker members noted the information provided by the Government representative and welcomed his presence in the Committee. The previous year, the Government had not attended the session of the Committee on this case, referring by mail to a case of *force majeure* and supplying a brief summary of the measures it had taken to meet its obligations. It had also requested ILO technical assistance. The Government's attitude, vis-à-vis both the Committee and the ILO, had offended the Worker members, who had therefore asked

that a special mention be included in the Committee's final report. Since 1999, three complaints had been submitted to the Committee on Freedom of Association from both employers' and workers' organizations, the last of which had been submitted in 2002 by the Confederation of Independent Trade Unions of Bosnia and Herzegovina. Despite repeated requests by the Committee on Freedom of Association, the Government had never supplied detailed information related to that complaint. In 2003, the Committee on Freedom of Association had therefore formulated its conclusions without having received the Government's reply. In its conclusions, the Committee on Freedom of Association had reminded the Government that the objective of the whole ILO procedure for examining allegations of violations of freedom of association was to ensure that freedom of association was respected in both law and practice. While the procedure protected governments from unreasonable accusations, these in turn needed to recognize the importance, for the sake of their own reputation, of supplying detailed replies to the allegations made against them. The Committee on Freedom of Association had also drawn the attention of the Committee of Experts to the legislative aspects of the case.

For a number of years, the Government of Bosnia and Herzegovina had not been fulfilling its obligations in relation to the ILO supervisory bodies. In addition to the repeated requests by the Committee on Freedom of Association, the Committee of Experts had also urged the Government on many occasions to supply reports on the application of Convention No. 87, which it had ratified in 1993. Since then, however, the Committee of Experts had only been able to examine two reports. In its latest comments, the Committee of Experts recalled the following legal points: the Law on Associations and Foundations constituted an obstacle to the registration of trade unions and the recognition of their legal personality; the legislation did not clearly define the reasons for which a registration request could be refused and therefore conferred on the competent authority a discretionary power which was tantamount to a requirement for previous authorization; the registration procedure was long and complicated, raising serious obstacles to the establishment of organizations, thereby giving rise to a situation which amounted to a denial of the right of workers and employers to establish organizations without previous authorization; the time limitations established by the legislation for registration were too restrictive and exposed organizations to disproportionate consequences if an application for registration was late, including the dissolution of the organization or the cancellation of its registration.

The Worker members recalled that, if workers and employers had to obtain previous authorization for the establishment of organizations, their right of association could be denied. Any delay due to the Government in registering a trade union constituted a violation of Article 2 of Convention No. 87, as had occurred in the case of the Confederation of Independent Trade Unions of Bosnia and Herzegovina. According to the information provided by the Government, significant progress had been made. Nevertheless, the Confederation of Independent Trade Unions of Bosnia and Herzegovina was still not registered, which prevented the most representative organization from defending the interests of the workers of Bosnia and Herzegovina and significantly weakened tripartite dialogue in the country. In its conclusions, the Committee on Freedom of Association had considered that the rejection of a request for the re-registration of a former good faith organization, which had been functioning for a long time, constituted a violation of Article 2 of Convention No. 87, and that the reasons invoked by the Government for rejecting this registration were not justified. The Committee on Freedom of Association had already requested the Government in 2003 to take all the necessary steps on an urgent basis for the rapid registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina.

The previous year the Confederation had initiated action with the Ministry of Justice so that it could finally be registered. In December 2005, the Minister had refused the application. At the end of January 2006, the Confederation of Independent Trade Unions had appealed against that decision, which constituted the final procedure at the national level. The Worker members stated that, in their view, this refusal was clearly unjustified and constituted a further attempt by the Government to delay the registration of the union. According to the Government, the Confederation could be registered at the level of the constituent entities, but not at the national level. However a choice of that nature should be made by the trade union concerned, and not imposed by the Government. Moreover, according to the Government, the problem would be resolved if the Confederation of Independent Trade Unions of Bosnia and Herzegovina established an umbrella organization with a union that was already registered. This argument was misleading as an umbrella organization could not be registered unless its founding organizations were also registered. The Worker members expressed the view that the time was right for the Government to demonstrate its good faith and that it should not confine itself, as it had done in the past, to unfulfilled promises. They therefore called on the Government to: register without delay the Confederation of Independent Trade Unions of Bosnia and Herzegovina in accordance with the provisions of Convention No. 87 and at the level chosen by the latter; supply a detailed report to the Committee of Experts for examination at the Conference of 2007; and fulfil its obligations in relation to the ILO, in particular with regard to supplying reports on the application of ratified Conventions and replies to the comments of the Committee of Experts and the other supervisory bodies.

The Employer members also recalled the difficulties that this Committee had faced the previous year due to the Government's absence. This was the fourth time that this Committee had discussed the case and the observation of the Committee of Experts pointed to several problems relating to registration requirements. Convention No. 87 was very clear on this point; employers' and workers' organizations were free to organize and establish themselves without the need for previous authorization. This was a basic and fundamental requirement and, if organizations could not even register, there was no basis for exercising their right to freedom of association. Article 32 of the Law on Associations and Foundations of Bosnia and Herzegovina authorized the Minister of Civil Affairs and Communication to accept or refuse requests for registration within 30 days. If the Minister did not take any action, the petition for registration was considered to be rejected, without further explanations. Clearly, this process would lead to arbitrary and unexplained results. Therefore, article 32 needed to be repealed and the legislation brought into line with Convention No. 87. According to the Government, the problem had been resolved. However, the Committee would need more concrete information than the Government's oral confirmation in order to assure itself that the problems of registration were indeed resolved. It had to be concluded that there were still restrictions on the establishment of organizations, including employers' confederations, at the level of the State and its entities. They also noted that the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina remained a problem. Finally, there was a separate problem related to the registration procedure. This needed to be amended to provide for more reasonable time limitations for organizations to register so that they would not suffer from adverse consequences resulting from delays in registration. The Employer members concluded that there continued to be a need for ILO technical assistance to bring the law and practice into line with Convention No. 87.

The Worker member of Bosnia and Herzegovina emphasized that the Confederation of Independent Trade Unions, of which he was president, represented 95 per cent of the organized workers in Bosnia and Herzegovina. He regretted that, for the past five years, the authorities had remained inactive with respect to his Confederation's application for registration, despite the absence of any legal obstacles. He hoped that the Government would finally accept the recommendations of the Committee of Experts and the ILO so that the case could be resolved.

The Worker member of Hungary noted that, according to the Committee of Experts, the law and practice of Bosnia and Herzegovina concerning the registration of newly established trade unions and employers' organizations was not in line with Convention No. 87. The registration period was unreasonably long and the registration process was too complicated. Moreover, the legislation conferred on the authorities' discretionary power, which was tantamount to a requirement for previous authorization. In addition, it did not clearly define the reasons for granting or refusing a registration request. She stated that the Worker members could not accept the explanations provided by the Government. The wording of Article 2 of Convention No. 87 was clear. In its General Survey on freedom of association, the Committee of Experts had emphasized that a genuinely discretionary power to grant or reject a registration request was tantamount to a requirement for previous authorization, which was not in compliance with Article 2 of Convention No. 87. It also emphasized that problems of compliance with the Convention arose when the registration period was too long and the procedure was too complicated. The Committee of Experts' comments and the General Survey were simple and easy to understand. The non-compliance with these standards implied serious violations of the right to freedom of association and could lead to violations of other important ILO standards. While ILO technical assistance could be useful and acceptable, the Government should also show that it had the political will to bring its law and practice into line with the Convention. There could only be one solution, which was the immediate registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina.

The Government representative recalled that his Government had provided nine replies to the comments made by the Committee of Experts and the Committee on Freedom of Association. Those replies had also contained detailed information provided by the Ministry of Justice of Bosnia and Herzegovina. This information was included in the documentation that was before the Conference Committee and should be taken into account in its discussions. He emphasized once again that the authorities of Bosnia and Herzegovina did not challenge the right of trade unions to organize, or the right of workers to organize and to establish trade unions. However, the Government could set conditions for the registration of trade unions so that they could acquire the necessary legal status in order to participate in legal transactions. He recalled that, under the terms of the Law on Associations and Foundations of Bosnia and Herzegovina, the period established for a decision on the registration of an organization was 30 days. If the documents submitted needed to be modified, this should be done before the registration procedure could be completed. The issue with

regard to the Confederation of Independent Trade Unions of Bosnia and Herzegovina was related to its re-registration. When the Law on Associations and Foundations of Bosnia and Herzegovina was adopted in 2002, it allowed a period of six months for re-registration from lower levels at the state level. The Confederation of Independent Trade Unions of Bosnia and Herzegovina had not fulfilled this requirement within the period of six months. He further recalled that there were two trade union confederations seeking registration at the state level, namely the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBIH) and the Confederation of Trade Unions of Bosnia and Herzegovina (KSBIH).

However, regardless of the problems that had arisen, the fact that the Confederation of Independent Trade Unions of Bosnia and Herzegovina was not registered at the state level was not an obstacle to the establishment of the Economic and Social Council of the Federation of Bosnia and Herzegovina, nor to the continuation of dialogue between the Government and the social partners. Finally, it should be recalled that the Confederation of Independent Trade Unions of Bosnia and Herzegovina represented workers in one of the entities of Bosnia and Herzegovina, namely the Federation of Bosnia and Herzegovina, while the Confederation of Independent Trade Unions of Bosnia and Herzegovina was seeking registration also at the state level, that is to say at the national level. The Confederation of Independent Trade Unions of Bosnia and Herzegovina had sought registration as an umbrella organization. Given the fact that the Law on Associations and Foundations of Bosnia and Herzegovina set the terms for all associations at the state, i.e. national, level, it followed that none of the associations or confederations of any type should act as an exclusive umbrella organization. He did not therefore agree with the claims made concerning the refusal to register the Confederation of Independent Trade Unions of Bosnia and Herzegovina. An application for registration had been received from the Confederation of Trade Unions of Bosnia and Herzegovina, the founders of which were the Confederation of Independent Trade Unions of Bosnia and Herzegovina, the Confederation of Trade Unions of the Republika Srpska and the Trade Union of the Brcko District, but it had not been possible to approve its registration because of the unresolved legal issues relating to the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina. However, he reaffirmed that, despite these difficulties, the Confederation of Trade Unions of Bosnia and Herzegovina was accepted as one of the social partners at the state level, as representing workers' trade unions. In this context, its participation as the social partner in the Economic and Social Council of Bosnia and Herzegovina was currently under consideration. This had all been facilitated by the ratification of Convention No. 144 in February 2006. The national authorities were aware that the registration of trade unions could not be completed under the existing provisions of the Law on Associations and Foundations of Bosnia and Herzegovina and it was planned to initiate the procedure of harmonization of the provisions of the Law with Convention No. 87 and the comments of the Committee of Experts, or to adopt new legislation to resolve these problems.

The Worker members noted the additional information provided by the Government representative. They nevertheless recalled that the case had been examined for many years and that no concrete results had yet been achieved. In addition, the conditions imposed by the Government for the registration of a trade union were excessive. They therefore requested the Government to proceed without delay to the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina in accordance with the provisions of Convention No. 87 at the level that it wished, to provide a detailed report to the Committee of Experts and to comply with obligations towards the ILO.

The Employer members thanked the Government representative for the additional information provided, which they believed to be transparent. The reply by the Government representative demonstrated the importance of discussing cases of this nature in the Conference Committee, as the statement by the Government representative suggested that the problems might be more complex than the examination by the Committee of Experts seemed to show. The observation of the Committee of Experts was confined to Article 2 of Convention No. 87, which covered the question of previous authorization for the establishment of organizations. However, the Government appeared to be saying that the issue concerned the right to establish and join confederations, which was covered by Article 5 of Convention No. 87. There was still a lot of confusion regarding the case, which needed to be clarified. The Government should therefore be requested to provide a comprehensive report to the Office on the precise legal situation concerning employers' associations and workers' organizations. What was needed was to help the Government arrive at a clear understanding of the requirements of the Convention. Moreover, it was clear that the issue of employers' associations had not yet been resolved and that there was a need for more information to be supplied to the Committee of Experts, which should then provide a clear and comprehensive assessment of the situation in the country.

The Committee took note of the information provided by the Government representative and the debate that followed. The Committee observed that the pending questions concerned the legal requirement for previous authorization at the discretion of the administration for the establishment of employers' and workers' organizations and confederations, the lack of registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina, the need for legal provisions to ensure that employers' confederations were registered both at the level of the Republic of Bosnia and Herzegovina and that of its two entities, and the lifting of legal obstacles and delays in the registration procedure.

The Committee took note of the Government's statements according to which efforts were being made to resolve the registration problems of the Confederation of Independent Trade Unions of Bosnia and Herzegovina and that a process to reform the legislation had been initiated so as to give full effect to the Convention. The Committee also took note of the Government's statement that an employers' association of Bosnia and Herzegovina had been established, but that there were still registration problems for confederations at the national level. Furthermore, the Committee took note of the fact that the absence of registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina did not prevent them from participating in social dialogue.

The Committee expressed its concern at the situation and emphasized that the problems mentioned represented serious violations of the Convention and requested the Government to take measures to modify the law and practice without delay in order to ensure the effective observance of the provisions of the Convention. In particular, the Committee urged the Government to take all the necessary steps, including those aimed at the amendment of the legislation, in order to ensure without any new delay the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina at the national level and to eliminate the requirement of previous authorization and other obstacles to the registration of organizations, as well as to ensure that employers' organizations could obtain registration under a status conducive to the full and free development of their activities as employers' organizations.

The Committee expressed the firm hope that it would be in a position to note progress in the very near future and requested the Government to accept further ILO technical assistance and to send a complete report for the next session of the Committee of Experts explaining the legal situation in the country regarding registration, and to report on any progress achieved in relation to improvements in the application of the Convention.

Bolivarian Republic of Venezuela (ratification: 1982). **A Government** representative (Minister of Labour) thanked the Committee of Experts for its report, while noting that it did not include a footnote requesting his country to supply full particulars on the Convention. He indicated that his Government had therefore been surprised at the call to provide information to the Committee. It was obvious that this call reflected political manipulation, which called for reflection on the appropriate use of the supervisory procedures and mechanisms. He said that there were no technical reasons justifying the examination of the situation of labour and trade unions in his country and he therefore wondered as to the real reasons. The Bolivarian Republic of Venezuela had been called to provide clarifications to this Committee every year without interruption since 1999, the year when Hugo Chavez became the President of the Bolivarian Republic of Venezuela, putting an end to decades of administrations characterized by corruption and social indifference, which had immersed the country in conditions of underdevelopment, poverty, the exclusion of immense sectors of the population and dependency and the transfer of resources abroad. Since 2002, the Government had received two direct contacts missions, and recently a high-level mission in January 2006, which had produced a report at the end of May that was currently being analysed by experts in his country. He highlighted several points of a general nature in the report, including: the willingness of the various institutional actors to address the different issues in a transparent and sincere manner and identify difficulties so as to make progress in resolving them; the evidence of the progress achieved in social dialogue, seeking to work towards participatory, inclusive and comprehensive democracy; and the consensus of the actors to leave behind the events of 2002 and 2003 and turn the page. Everyone agreed that they wanted to be part of building a more inclusive society which used economic growth to eradicate the structural inequality and exclusion inherited from the past.

He then referred to the progress achieved and positive measures taken in relation to freedom of association and in other areas. In this respect, he said that the regulations of the Basic Labour Act had been amended to overcome the deregulation and increased precariousness that had been encouraged by the previous Government. The amendment established standards relating to collective organizations covering the liberal professions, in which both employers and workers were members of a single organization. Special protection measures had been established for workers in the event of termination of employment, anti-union measures or discrimination on grounds of maternity, and the practice adopted by the Government of organizing social dialogue forums had been included in the legislation. Standards had been established to ensure transparency in the management of trade unions

and to promote their democratization, while respecting their statutes and by-laws. The measures taken in relation to trade unions had been accompanied by the abolition of youth training and first employment contracts (which involved young persons between 18 and 24 years old), the suppression of temporary work agencies, the strengthening of sanctions for labour violations, the rescue of enterprises undergoing technological or economic crises through joint management and self-management, thereby going beyond the outdated concept of massive lay-offs and staff reductions, as had occurred in the past. Furthermore, a new "labour solvency" standard had recently entered into force, which prohibited the State from concluding contracts, allocating foreign currency, issuing import or export licenses, or offering preferential loans from public enterprises to employers which did not comply with labour, union and social security rights. This measure had been adopted and after several months of social dialogue, and its entry into force had been postponed until 1 May at the request of the employers. The measure would ensure greater compliance with reinstatement orders and an increase in the collection of social security contributions. In the second half of 2005, the National Assembly had adopted the Basic Act on prevention, working conditions and the work environment, the Social Services Act and the Act respecting the Employment Benefits Scheme, all in the framework of a public social security scheme based on the principle of solidarity. With the new Act respecting occupational safety and health, a process had been initiated for the democratic election by workers of 10,600 occupational safety and health prevention delegates, in addition to the 8,400 joint committees which already existed. Furthermore, joint working groups had been established in the electricity, construction, oil, agrarian and sugar refinery sectors. Moreover, in 2004, a total of 458 trade unions had been established and 834 collective agreements concluded. In 2005, a total of 530 trade unions had been established and 564 collective agreements concluded. There was also a working relationship with other institutions, such as the National Assembly and the National Electoral Council, which had been informed of the position of the ILO and the Government on the various pending issues, as reflected in the report of the high-level mission.

With regard to trade union elections, his Government had posted its public position since 2003 on the website of the Ministry of Labour. In accordance with the Basic Act on the Electoral Authority and international Conventions, trade unions could hold their elections independently, in accordance with the law and their statutes. His Government had even promoted meetings with trade unions, which had led to a joint statement to this effect. The position of the Ministry of Labour on this issue had been reiterated and it had been supported by the judges of the Supreme Court of Justice, and was contained in the draft amendment to the Basic Labour Act. His Government hoped that the positions that were contrary to the National Electoral Council, which had existed in the past, would be resolved by the Council's new authorities, appointed in the end of April, and who had been notified of the ILO's position.

With regard to the amendment of the Basic Labour Act, he said that the Committee of Experts had recognized the progress made in the legislative reform, which had been the subject of consultations and ILO technical assistance. His Government considered that the concern of the high-level mission with regard to the re-election of trade union leaders had been dissipated following meetings with deputies of the National Assembly and by the practice followed in the country. He said that there were trade union leaders who had been democratically re-elected and who had engaged in collective bargaining following their re-election. The amendment of the Act was included on the agenda for 2006 of the new National Assembly, which had only been sitting for five months. Following consultations, the new National Assembly had expressed interest in an integral reform with a view to overcoming old neo-liberal legal provisions. There was consensus on the matters raised by the ILO concerning freedom of association, although the differences that arose were related to the aspects of termination of employment and its association with old-age pensions. The speaker reaffirmed that since 1999 there had been constant social dialogue in his country, which had increased since the end of 2004. He added that the social dialogue meetings had not left aside any sector or any organization. Between October 2005 and May 2006, the Government and the Venezuela Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) had held over 28 meetings, with the participation of the President and Vice-President of the Bolivarian Republic of Venezuela, ministers and high-level officials, and they had covered a variety of subjects. Similarly, over the same period, over 50 meetings had been held with the social partners, without overlooking other consultations in writing or through inquiries. The Government recognized the role of FEDECAMARAS and the other employers' organizations. He emphasized that the President of FEDECAMARAS himself had acknowledged that it was necessary to open up social dialogue to all employers' organizations with different levels of membership and integration into the various economic sectors (including micro, small and medium-sized enterprises). The President of FEDECAMARAS had indicated to the high-level mission and the Government that no sector should be excluded. He welcomed this progress, which permitted broad, participatory and democratic social dialogue. As a result of the dialogue and the Government's sovereign and popular policy, economic growth had been achieved, with a sustained increase in minimum wages. The positive indicators were the shared achievements of workers and employers, and of a society that was in communication with the Government, with a view to achieving levels of justice in the distribution of wealth that had been denied the country in the past. He indicated that in this context it was inexplicable that certain spokespersons of employers' organizations should change the positions in this international forums that they advocated in the country, in an attempt to revive the agenda of 2002 and 2003, and claiming that the Government's many meetings were not productive and did not lead to agreements. He raised the question of whether social dialogue was of disservice to employers, as it was not the tool of labour deregulation, precarious employment and the privatization of social security. Finally, he emphasized that his Government was not giving up social dialogue as an instrument of consultation and participation on a broad level with a view to transformations which extended rights, rather than reducing them. In this respect, he expressed the view that the Conference Committee and the other supervisory mechanisms should no longer let themselves be used for political purposes to cut short the route chosen by a people to renew democracy and confront neo-liberal values.

The Worker members were satisfied with the recent improvement in relations between the ILO and the Government, especially as it had accepted a high-level mission on technical assistance, which took place in January 2006, with the objective of achieving improved applications of the Convention. They nevertheless declared that they were not in a position to immediately discuss the findings of this mission, as the Government member had done. The Worker members took note of the Government's report and of the Employers' statement and, after wide-ranging discussions with national and international trade union organizations, in particular the representative of the Single Workers' Central of Venezuela (CUTV), delegated to represent Venezuelan workers at the Conference Committee, along with those of the National Workers' Union (UNT) and the Venezuelan Workers' Federation (CTV) representative, who was part of the ICFTU delegation. They also took note of the ICFTU annual report on violations of trade union rights which referred to the same facts as the most recent reports of the Committee of Experts.

Finally, the Worker members took note of the items which were still pending, even though the Conference Committee had examined them on several occasions in recent years:

(1) regulations in contradiction with the Convention, which related to the submission to the National Electoral Council of union electoral procedures, a problem on which the Government reported that the procedure was not mandatory, a fact which remained to be confirmed in writing in order to constitute a legal basis and ensure equal legal protection for all;

(2) the application of Article 3 of the Convention, i.e. the right of workers' and employers' organizations to constitute their own statutes and administrative rules, to freely elect their representatives, to organize their management and activities, to draw up plans of action, the public authorities being bound to abstain from all interference that might limit this right or impede its legal execution. In this respect, the comments of the recent ILO mission to the country had to be awaited to confirm the recent developments reported by the Government; and

(3) information presented by the Government spoke of the strengthening, since 2005, of social dialogue, which included both employers' and workers' organizations. This social dialogue was in need of strengthening, mainly via a permanent tripartite structure which would meet the requirements of workers' organizations and allow issues to be examined more in depth, taking full account of the opinions of all partners. So that the principles and rules incorporated in the Convention could be fully applied, progress was required both formally and qualitatively.

The Worker members were pleased that the first positive signs were emerging from the ILO mission to the country. They noted that other similar moves in other countries, along with Conference Committee follow-up, had proved the usefulness and importance of tripartite dialogue mechanisms to move forward workers' rights both in law and in practice. They requested the Committee of Experts be provided as usual with the conclusions of the report of this mission, as well as with the information supplied by workers' and employers' organizations and the Government to the ILO. They expressed the hope that the Committee of Experts would be able to take note, in its next report, of the progress expected.

The Employer members thanked the Minister of Labour for his presence before the Committee, and for the information he had supplied. Recalling that the Government had previously received two direct contacts missions from the ILO, and a high-level mission in January 2006, they regretted to note that the report of the high-level mission had not yet been made public by the Government; without this report, there was no chance of independently assessing the observations made by the Government. Referring to the new laws the Government had spoken of, they asked whether consultations had been held with the most representative organizations. On the revisions to the labour legislation, the Employer members noted that, apparently, employers' organizations had not been consulted. They asked the Government whether it had, in fact, held consultations with FEDECAMARAS, the most representative employers' organization. They

observed that at its core the present case concerned Article 3 of the Convention, which enshrined the principle of non-interference in the internal affairs of an employers' or workers' organization. Despite several years of discussion, it was clear that the Government still did not fully grasp the requirements of this Article. This case involved interference with employers' organizations, in particular FEDECAMARAS, and said interference had even affected the work of the Committee, by means of the Government's involvement in the very designation of the Employers' delegation. This practice, in fact, was denounced by the Employer members in 2004 and 2005. On each of those occasions, the Credentials Committee recognized FEDECAMARAS to be the most representative employers' organization; the Credentials Committee also held that the appointment of other employers' organizations in effect punished FEDECAMARAS and expressed the hope that the Government would give this finding due consideration. In this respect, the Government had again failed to fulfil its obligation to designate the most representative organization of employers. The Government, furthermore, had failed to provide delegates of the social partners with adequate resources to fully participate in the Conference.

The Employer members indicated that it was difficult to discern, from the Committee of Experts' 2005 observation, that the present case involved interference with employers' organizations. This was surprising, considering the consistent findings of the Committee on Freedom of Association in support of the Employer members' concerns, as well as the fact that their 2005 statement devoted a substantial amount of time to explaining the problems created for employers' organizations and the personal threats individual employer representatives were under. Nevertheless, the present case was undoubtedly a serious one. It was unclear whether the Government was consistently involving CTV and FEDECAMARAS in social dialogue. The serious nature of the case was underscored by the fact that the former president of FEDECAMARAS was arrested and now in exile. The principle of non-interference set forth in Article 3 of the Convention was clear and unambiguous: the Employer members urged the Government to take immediate steps to comply with this requirement and fulfil its obligations with the organizations of employers and workers.

The Government member of Honduras, speaking on behalf of the group of the Latin American and Caribbean Countries (GRULAC) took note of the Committee of Experts' observations as well as the statements from the Government and the social partners' spokespersons. She reiterated the commitment of GRULAC with international labour standards and the supervisory mechanisms of the ILO, in particular with those concerning freedom of association. She highlighted that, despite the progress observed by the Committee of Experts, the Government was once again, after seven consecutive years, called before the Committee to provide information. Furthermore, she recalled that the Government had hosted two direct contacts missions, and that a high-level mission took place in January 2006. She highlighted the already demonstrated good will of the Government to bring the information requested by the supervisory bodies and to cooperate with the ILO. The ILO should take advantage of this good disposition in order to reach solutions, which should be properly addressed through technical cooperation from the Office. She encouraged both the Committee and the Office to take this opportunity and reiterated, as it had already been done by GRULAC on previous occasions, the need to improve the methods of work of the Committee in order to achieve greater transparency and avoid that those spaces created for constructive social dialogue be used for political purposes.

The Government member of Cuba welcomed the position taken by the Government of the Bolivarian Republic of Venezuela in accepting the invitation to appear before the Committee, especially as the invitation had not come from the Committee of Experts using the usual footnote method. This was not the first discussion and many of the arguments put forward by the Employer members were well known. The Bolivarian Republic of Venezuela had made tangible progress. It had listened to the recommendations of the Committee of Experts, had accepted and continued to accept the technical cooperation requested by the Conference Committee. It had accepted and received a direct contacts mission in 2002, another in 2004 and a high-level mission in 2006, but the Government continued to be called to appear before the Committee. The Bolivarian Republic of Venezuela was carrying out plans for the inclusion of workers and of the population in general; the labour rights of workers were accorded priority, there were programmes for the application of the law; labour inspection had increased in support of health, safety, protection and education of workers' programmes; progress was being made with housing programmes for those segments of the population traditionally excluded or marginalized; there were major investments in infrastructure and transport services and energy to improve the quality of life of workers and of the entire population, all meaning that the country was making progress. Nevertheless, the country continued to be called to appear before the Committee. The speaker indicated that when the Bolivarian Republic of Venezuela was rife with corruption and violations of the social legislation and of human rights, it had not been called to appear before the Committee. It was only now, when the Government was working actively to solve the major problems stemming from misery and unemployment and having carried out the principles of dignity of work and jobs for all, that the country was called to appear before the Committee. He declared that his Government did not understand the criteria used to select a country to appear before the Committee. Other governments had also expressed their displeasure and concern for the lack of transparency which occurred in the drawing up of the list and which led to the conclusion that there was a need to improve the Committee's working methods to provide more transparency and participation of all actors concerned in conformity with the criteria laid down by the non-aligned countries to prevent the space for constructive social dialogue in favour of the world of work being used for political ends to the benefit of interests that had nothing to do with the principles of the ILO.

The Government representative referred to the statement of the Employer members, relating to the secret nature of the report of the high-level mission and informed the Committee that his Government was still examining the report. He explained that in his country a national consensus prevailed, which recognized the need to intensify the social dialogue so as to overcome injustice and exclusion, and to make progress in bringing the legislation into conformity with the practice of the Convention, as had been the case until the present time. He underlined that progress was evident to all for it was the outcome of the efforts made by the various social partners to overcome poverty and exclusion. With respect to the various laws, which had been recently adopted, he indicated that proper consultations had taken place in their respect. He added that the new bill on the basic labour law was adopted on 1 May 2006. Since October 2002, the draft had been submitted to various consultations, headed by the Ministry of Labour, and with the participation of several members affiliated to the CTV and to FEDECAMARAS. The law, which was then in force, was amended. It had been adopted by decree. The speaker referred to the bill for the nourishment of workers who had been the subject of profound consultations at the present time, and which had been attended by a large number of the social partners including FEDECAMARAS. This demonstrated the will of that organization to overcome exclusion. He indicated that consultations for the adoption of legislation had been carried out primarily with national organizations, followed by the local partners and that they finally had been extended to the entire population. He added that such consultations would be taken into account according to the level of interest of each segment consulted on the legislation to be adopted. At the present time, consultations were being finalized on the Law on Health and Security at Work, which was initiated during the high-level mission. All the proposals would be properly examined at the Round Table on Social Dialogue (*Mese de Diálogo Social*). The Government did not disregard its obligations concerning Convention No. 87. It clearly recognized the ILO position on the trade union elections and was of the view that the Government's attitude coincided with that of the ILO. He recalled that, at the present time, only the participation of the National Electoral Council was allowed when its own organizations requested it to do so. He rejected all accusations of state intervention in the operation of the social partners' organizations. In the Bolivarian Republic of Venezuela, there was trade union freedom. In fact, some trade unions, which had not formerly existed, participated at the present time in the trade union movement. Moreover, many of the organizations, which were catalogued as "instruments used by the Government", were in operation for many decades, but had not had the opportunity to participate in the previous political context. The opening up of social dialogue could have an impact on the integration of the delegations participating in the Conference. The delegates should reflect upon the new structure and openness. The Government had no influence whatsoever in the representation of such organizations. His Government was committed to fully comply with Convention No. 87.

The Worker members took note of the information presented by the Government, mainly on the adoption of new laws and regulations intended to bring the legislation in line with the Convention, as well as of the Employer members' statements. They welcomed the cooperation shown by the Government and the high-level technical assistance provided. They again expressed their conviction that social dialogue was the most appropriate method in guaranteeing sustainable application of trade union freedoms.

The Employer members expressed astonishment at the mildness of the Worker members' views on the present case, considering the serious issues at hand that concerned both workers' and employers' organizations. This case was not about politics; it was about employer representatives being threatened, placed under exile, and having their freedom of movement restricted – the same infringements suffered by trade unionists in many other countries. The present case was about honouring two of the cornerstones of the ILO's philosophy: the independence of organizations of the social partners and tripartism. It was an extremely serious case, on which no progress had been made.

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

The Committee referred to the following pending questions: legal restrictions to the right of workers and employers to establish the organizations of their own choosing; the right of these organizations to draw up their by-laws and freely elect their leaders and the right to organize their activities, without interference from the authorities; the refusal to recognize the results of trade union elections; shortcomings in social dialogue and the protec-

tion of civil liberties, including the freedom and security of persons. The Committee noted that, pursuant to its request of 2005, a high-level mission from the Office had taken place in January 2006.

The Committee took note of the Government's statement which referred, inter alia, to a Bill aimed at remedying the legal problems raised by the Committee of Experts. It further noted that this would be an integrated reform, and, while there was general agreement on the matters relating to freedom of association, there were differences of opinion relating to the question of old-age pension.

The Committee noted that the Government stated that all social actors participated in the social dialogue, including FEDECAMARAS, and that progress had been made in consolidating democracy and pluralism. The Government also indicated that various laws had been adopted in the social-labour field and referred in particular to the reform of the regulations of the Basic Labour Act, in which all sectors had been consulted, that, among others, aimed at strengthening the protection against anti-union discrimination and institutionalized the practice followed by the Government in relation to social dialogue. Moreover, the Committee noted that the Government had informed the new members of the National Electoral Council of the comments of the Committee of Experts in respect of trade union elections and the Government trusted that the Council would now take measures to ensure that it only intervened to provide technical assistance when requested by the unions. The Committee also noted the statistics provided by the Government relating to the number of new trade unions and collective agreements.

The Committee took note of the efforts indicated by the Government that it had deployed to enhance social dialogue.

The Committee asked the Government and the competent authorities to accelerate the processing of the reform of the Basic Labour Act and trusted that the future Act would bring the law into full conformity with the Convention and resolve the important pending issues mentioned by the Committee of Experts, in particular as regarded the right of employers' and workers' organizations to carry out their activities without interference. It expected that the necessary measures would be taken as a matter of urgency to ensure that the recourse to the National Electoral Council in union election processes was wholly voluntary.

The Committee requested the Government to intensify the dialogue with representative workers' and employers' organizations, including FEDECAMARAS. The Committee hoped that progress could be made towards a tripartite agreement with all the social partners, which would set out clearly the basis for sustained and constructive social dialogue. It requested the Government to send information to the Committee of Experts on any progress made in this regard. The Committee observed with regret that, contrary to the request in its conclusions of the previous year, the Government had not lifted the restrictions to freedom of movement imposed on certain FEDECAMARAS leaders and reiterated its request in this regard.

The Committee requested the Committee of Experts to examine the report of the high-level mission and the recent regulations to the Basic Labour Act and requested the Government to send a complete and detailed report on the pending questions.

The Government representative said that the conclusions should reflect the progress achieved on each of the questions examined more positively. He observed that his Government did not agree with certain aspects of the conclusions, as they did not reflect the discussion of the case, with particular reference to what had been said concerning civil liberties. With respect to the tripartite agreement proposed in the conclusions, he stated that his Government would not agree to sign anything concerning that which already existed in practice through the manner in which social dialogue was practised in his country with all counterparts without exception.

The Worker member of the Bolivarian Republic of Venezuela expressed his total disagreement with the conclusions presented, as they did not reflect the tone or content of the debate which had taken place. The statements to the effect that in the Bolivarian Republic of Venezuela the right of the workers and employers to create organizations was restricted or limited were totally false. Furthermore, he referred to supposed restrictions on the civil liberties of an employer leader, and stated that in reality this was all about an ex-leader of an employers' organization who was being prosecuted for common law offences.

Zimbabwe (ratification: 2003). The Government communicated the following written information.

The Government of Zimbabwe has been appearing before the Conference Committee on Application of Standards since 2002. In the previous four appearances, Convention No. 98 – Right to Organise and Collective Bargaining Convention, 1949, was used as the basis of the listing. This year, Convention No. 87 – Freedom of Association and the Protection of the Right to Organise, has been used as the basis of listing the Government of Zimbabwe. In all the previous appearances, the interventions from the Workers' group and indeed from the representatives of the European Union and its associated members focused on political issues of Zimbabwe which were not linked to the terms of the appearances. In addition, the conclusions of the Officers of the Committee were in all instances biased hence the contestation and rejection by the Government of Zimbabwe of the suggested direct contacts mission in 2005.

The Government of Zimbabwe is of the view that unless the International Labour Conference's Committee on Application of Standards' working methods are urgently revised, it runs the risk of gradually being transformed into a political platform for castigating and ridiculing developing countries which are perceived otherwise by the West. In the case of Zimbabwe, its former colonial power has, since 2000, internationalized the political differences between the two countries over the land issue. Workers' organizations, mainly from Europe, being coordinated by the International Confederation of Free Trade Unions (ICFTU) are working in cahoots with individuals in the Zimbabwe Congress of Trade Unions (ZCTU) who have an appetite for donor money to advance the political agenda of Zimbabwe's former colonial power at every session of the International Labour Conference (ILC) as well as in Zimbabwe.

The listing of Zimbabwe at this session of the ILC is premised on Convention No. 87 – Freedom of Association and the Protection of the Right to Organise. In the report of the Committee of Experts on the Application of Conventions and Recommendations on page 132, reference is made to individual cases which fall within the purview of the Committee on Freedom of Association (CFA). These cases were ably responded to by the Government and some were finalized by the CFA. In addition, the Public Order and Security Act (POSA) was cited. It is interesting to note that the majority of the cases cited on page 132 are the same cases which the Workers' group, ZCTU included, were making reference to during the previous appearances. These cases were dismissed by the Government as either unfounded or of a political nature. Some of the incidences covered in the cases are still to be finalized by the CFA due to lack of adequate information and in some instances, unconvincing arguments on the part of the complainant, in this case, ICFTU. The Committee of Experts noted that POSA does not apply to trade union activities or public gatherings which are not political. Surprisingly, it remains concerned that POSA "may be used in practice so as to impose sanctions on Trade Unionists for conducting a strike, protest, demonstration or other public gathering".

The Committee of Experts' fears are unfounded and it is unfortunate that its position was influenced by the incidences cited in Cases Nos. 2313 and 2365 which were examined by the CFA. As responded to by the Government, the cited incidences did not relate to trade union activities but rather political matters. It is common knowledge that certain individuals within the ZCTU are political and work in cahoots with the Movement for Democratic Change (MDC), the National Constitutional Assembly (a quasi-political organization) and the Crisis Coalition of Non-Governmental Organizations led by the current Secretary-General of the ZCTU. Their agenda is to topple the democratically elected Government of Zimbabwe at the instigation of the foreign powers which want a regime change in Zimbabwe. POSA is about protecting the sovereignty of Zimbabwe and its citizens. It has nothing to do with trade union activities pursued by an insignificant percentage of the population. Accordingly, POSA will remain intact notwithstanding the outcry which is associated with the trade union organizations with political inclinations. Legislation, similar to POSA, exists in several countries whose governments are mindful of their duties to protect their citizens against internal or external elements which are motivated to bring about disorder. Genuine trade unionists in Zimbabwe have no problems with POSA and no reasons to fear it as it does not apply to its meetings. It is only those who are promoting a foreign political agenda of regime change that are against POSA. POSA is not at cross-purpose with the Labour Act (28:01) which governs industrial relations in Zimbabwe.

In addition, before the Committee, **a Government representative** (Minister of Public Service, Labour and Social Welfare) recalled that the Conference Committee had discussed the application by his country of Convention No. 98 in four consecutive sessions between 2002 and 2005 and that the only difference this year was Zimbabwe's listing for discussion on the application of Convention No. 87. In his Government's view, the interventions in previous sessions had not focused on the issues arising from the application of Convention No. 98 and had shifted to a political discourse. Hence there was the perception by the Non-Aligned Movement (NAM) member States, especially the Africa group, that Zimbabwe's appearance on the case list was politically motivated. He urged the Committee to focus on matters falling within its competence and leave aside issues of a political nature. Turning to the comments of the Committee of Experts, the speaker stated that individual cases of workers dismissed taken up by the Committee of Experts and the Committee on Freedom of Association were trivial and political in nature. He questioned whether the Committee would really wish to examine workplace disputes, ordinarily handled by national dispute settlement machineries. Regarding the Public Order and Security Act (POSA), the speaker assured the Committee that the relevant Act was never meant to interfere with trade union activities. Instead, the POSA had been enacted with a view to dealing with the problem of terrorism and protecting Zimbabwe's sovereignty, order and peace. He recalled that POSA had

been adopted on the behest of governments who had urged his country to toughen its laws after the terrorist attacks of 2001. Issues pertaining to trade union activities were dealt with by the Labour Act, which was in full conformity with the requirements of Convention No. 87.

The Employer members recalled that the Conference Committee had discussed the application by Zimbabwe of Convention No. 98 on a number of occasions. They acknowledged that some progress had been made but pointed out that important issues had still to be resolved. Since it was the first time that the Committee discussed the case of Zimbabwe under Convention No. 87, it was important for the Government to understand what its obligations were under both Convention No. 87 and Convention No. 98. A key aspect of Convention No. 87 concerned the interdependence of civil liberties and trade union rights. According to the ILO supervisory bodies, restrictions on civil and political activities constituted serious inhibitions of freedom of association. Free and independent trade unions could only develop in an environment of freedom and respect of civil and political rights. In this context, the speaker made a reference to the case of Nicaragua, which was of major importance for the Employer members. Although they understood the Government's wish to separate the political issues from those arising under Convention No. 87, they maintained that the two were inseparable. The provisions of Convention No. 87 presupposed the right to freedom and security of person, the right to freedom of movement, the right to freedom of opinion and expression, as well as the right to freedom of assembly and association. This meant that trade union activities could not be restricted solely to trade union matters, since they were intertwined with political questions.

The Worker members expressed their regret about the fact that in its reply the Government had hardly touched on the concerns voiced by the Committee of Experts but had rather confined itself to general comments which had not responded to the latter's requests. In their view, there was no doubt that the Government of Zimbabwe engaged in gross and flagrant violations of fundamental human rights, including the right to freedom of association, despite the fact that it had ratified and hence undertaken to abide by the ILO Conventions on freedom of association. They stressed that Zimbabwe was not being discussed for a consecutive sixth year because of its land reform policy, its international status or geographical size, but merely because of its flagrant disregard of Convention No. 87. The Worker members drew the Committee's attention to the fact that the Government had often relied on the provisions of the POSA for the purpose of imposing a ban on gatherings, demonstrations and strikes and harassing trade union leaders. In support of their submissions, the Worker members presented to the Committee a number of refusals by the authorities to carry out public meetings and demonstrations. In one case where the request to commemorate women's day was granted, the restrictions imposed by the authorities included the prohibition of singing or shouting slogans, of explicitly or implicitly raising or discussing political issues, and a strict timetable for the event and the monitoring by security forces. In this context, the Worker members invited the Government to acknowledge the importance of the resolution adopted by the International Labour Conference in 1970, according to which "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated, in particular in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, and that the absence of these civil liberties removes all meaning from the concept of trade union rights".

The Worker members also referred to the cases pending before the Committee on Freedom of Association as evidence of Zimbabwe's disrespect of trade union rights. They pointed to instances of arbitrary arrest and injury of trade unionists and trade union leaders (Case No. 2313), dismissal and deportation of South African trade unionists for participation in strike action (Case No. 2365), anti-trade union dismissal of the recently re-elected president of the Zimbabwean Congress of Trade Unions (ZCTU), Mr. Lovemore Matombo, and the withholding of owed payment (Case No. 2328), police raiding the headquarters of the ZCTU (Case No. 2184) and manhandling of its recently elected Secretary-General, Wellington Chibebe (Case No. 2238). In closing, the Worker members also brought to the attention of the Conference the recent case of deportation of foreign trade unionists who were invited to participate in the congress of the ZCTU.

The Government member of Cuba stated that Zimbabwe had been placed on the list of countries called upon to provide explanations to the Committee, and on each occasion the Government had provided explanations that were easily understood by all. In particular, when perusing the report of the Committee of Experts, it could be seen that this was a case relating to the application of the national legislation of a State, which was merely an internal matter of a sovereign State. Therefore, the Government of Zimbabwe should be trusted to give proper effect to the POSA without violating its international commitments deriving from Convention No. 87, particularly as the Government had guaranteed that the Act did not apply to trade union activities or public assemblies which were not of a political nature, as indicated in document D.12. For this reason it was necessary to be careful when noting the present case, in which an attempt was being made to relate the internal situation of a country to compliance with international labour standards, which was tantamount to taking a position on a subject that was not within the mandate of the Committee. What should be done was to offer ILO technical assistance and cooperation.

The Government member of Austria took the floor on behalf of the Governments of the Member States of the European Union; the Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia, and the Former Yugoslav Republic of Macedonia, the Country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina, as well as the EFTA countries Iceland and Norway, members of the European Economic Area, aligned themselves with this declaration. He stated that, in the light of the Government's reply to the observations of the Committee of Experts contained in document D.12, a reaction was warranted. He strongly rejected Zimbabwe's assertion that the comments made by European Union Members States in earlier sessions of the Conference Committee on the country's obligations under Convention No. 98 focused on political issues, not directly linked to the question falling within the Committee's mandate. Social and labour standards were inseparable from human rights issues and by their very nature "political". It was therefore absolutely legitimate for the members of the Conference Committee to refer to the human rights situation in a given country in general when examining its compliance with the labour standards under scrutiny. In the opinion of the European Union, the language employed by the Government in document D.12 was polemic, even insulting and detrimental to the authority and work of the ILO supervisory system and called for its further strengthening. The speaker noted however that the oral presentation by the Government representative was more moderate in its tone than in document D.12. Turning to the application by Zimbabwe of Convention No. 87, the European Union Member States endorsed the concerns expressed by the Committee of Experts concerning the implications for the freedom of assembly of the POSA, which provided for the prohibition of trade union public meetings and gatherings that were deemed not to be for "bona fide purposes", without at the same time stipulating specific criteria for the determination of what constituted "bona fide purposes", thus opening the door for arbitrary decisions. They emphasized that workers' organizations should be free to voice their opinions on political issues in the broad sense of the term and to express their views publicly on a government's economic and social policies. They endorsed the requests made by the Committee of Experts in relation to Zimbabwe's application of Convention No. 87.

The Government member of Canada expressed his delegation's concern that the Government used the POSA to deny the rights of trade unionists to conduct a strike, protest, demonstration or other public gathering. In addition, the Canadian Government had protested against the arrest and detention of leaders and members of the ZCTU and had made representations for the respect of the right of freedom of expression and assembly and freedom of association. In particular, Canada had called on the Government of Zimbabwe to refrain from violence or undue force against peaceful protestors. Moreover, it was disturbing to note the frequent prevention of international labour union representatives from entering the country to meet with national trade unions and the Government should facilitate international exchanges between labour union representatives. The speaker mentioned his country's support for the labour movement in Zimbabwe, including research on the informal economy. He concluded by encouraging the Tripartite Negotiation Forum talks between the Government, business and the ZCTU that resumed last year.

The Government member of Nigeria, speaking on behalf of the Africa group, stated that the request of the Africa group for regional balance in the representation of countries in the selection of cases, formulated in 2005, had been acknowledged. Turning to the case under discussion, the speaker recalled that in its report, the Committee of Experts had stated that section 24 of the POSA, which had been criticized for conferring to the authorities a discretionary power to prohibit public gatherings, did not apply to gatherings of members of professional, vocational or occupational bodies held for non-political purposes or bona fide trade union purposes. The Africa group appreciated the concerns of the Committee of Experts, but since this particular issue was currently pending before the Committee on Freedom of Association under Cases Nos. 2313 and 2365, the Conference Committee should not have taken up the same issue before the former body was given sufficient time to conclude its examination. The Africa group believed that the simultaneous examination of the case by two supervisory bodies was counter-productive, putting the country in a position of feeling haunted and harassed. Turning to the question of the manner in which trade unions should articulate their demands, the speaker supported the idea of a practice that favoured tripartism and social dialogue instead of the threatening and antagonizing practices of holding protests, demonstrations and strikes. She referred to the experience of her country, which, in an effort to overcome similar problems, had discovered the value of social dialogue. African trade unionists should learn from this experience that workers' rights were best safeguarded through negotiation. She called upon the Committee to drop the case from the list of individual cases and invited the Office to strengthen the capacity of the social partners so that they would engage in meaningful social dialogue.

The Government member of Namibia stated that the

Government of Zimbabwe had fully addressed the requests by the Committee of Experts. With respect to the POSA, its response had clearly shown that it did not limit or ban trade union activities. Noting his surprise at the inclusion of this case on the conference list, he called for more clarity and transparency in the methods in determining the list of individual cases, and for the discussions to avoid focusing on political issues.

The Government member of Kenya stated that the Government of Zimbabwe had responded to the issues raised, and pointed out that the situation in Zimbabwe was a particular mix of national and international politics. Given the close relationship between the ZCTU and the Movement for Democratic Change, the supervisory bodies should apply the principles of fairness and honesty and set aside cases where trade union activities were flavoured with politics.

The Government member of South Africa stated that this case was very general and lacked specific charges. He appealed to the Committee to separate political issues from trade union matters, since part of the problem was a trade union in Zimbabwe that was pursuing a political agenda. He also called on the Committee to grant its confidence to the Government of Zimbabwe in order to pursue the application of Convention No. 87 without the feeling of being harassed.

The Worker member of Zimbabwe stated that during the last five years the ZCTU had been harassed by the police and other security agencies, and in all cases of arrest the detained had been charged under the POSA, despite the fact that section 24 of the Act explicitly stated that trade unions were exempted from applying for permission to hold trade union meetings or processions. For the last five years the courts had ruled that the trade unions were innocent but the uniformed police continued to harass them. In order to be able to freely assemble for trade union activities, special permission was needed from the police, which very often was denied. He further expressed concern about the ruling of the Supreme Court that had overturned the legality of a strike for the very first time. Furthermore, during the 6th Congress held by the ZCTU, some of the invited guests were deported. The speaker pointed out that reforms regarding the prison services had not taken place, despite a Government majority in the parliament, and that civil servants remained without a collective bargaining framework. He concluded by stating that the situation in his country was confirmed in the observations of the Committee of Experts and that industrial relations and dispute settlement were now treated under POSA.

The Worker member of Germany stated that she was speaking as the Workers' spokesperson in the Committee on Freedom of Association. Whatever was discussed in the Committee on Freedom of Association with regard to specific cases was of utmost importance to the work of the present Committee.

The Government member of Nigeria raised a point of order claiming that the findings of the Committee on Freedom of Association were not the subject of discussion before the present Committee.

The Chairperson ruled on the point of order, that any kind of illustrative information was admissible before the Committee and requested the Worker member of Germany to restrict herself to providing such information.

The Worker member of Germany stated that the Committee on Freedom of Association had had to deal with the case of Zimbabwe only two weeks ago. Case No. 2365 concerned several trade union leaders who were in jail since 2004 without indication of reasons; with the dismissal of 56 workers of the Netone factory, who had participated in a strike because management had left the bargaining table; and the expulsion from Zimbabwe of a trade union delegation from South Africa. The case had been dealt with in the Committee for the third time. Since the Government had not yet answered the Committee's questions from June last year, two weeks ago the Committee had to deal with the Case without any reports from the Government. The case touched upon one of the most basic trade union rights concerning the defence of their economic and social rights – the right to strike.

In the case of the strike at the state telecommunications enterprise, Zimpost and TelOne, management had not paid the wage increases, to which it had been sentenced by a court of law. Management decided unilaterally to pay less than half of the wage increases decided by the court. The workers from TelOne approached the Minister in charge and the State Secretary, Karkoga Kasela, instructed management to find an out-of-court solution. Upon the management's refusal, the workers announced a strike, which began two weeks later, on 6 October 2004. On 12 October, some 25,000 workers (half of the workers of the post and telecommunications sector) joined the strike. On 21 October, the Government set up armed sentries in the major post and telecommunications offices throughout the country. The guards were used to intimidate the striking workers and local trade union leaders. One day before the beginning of this massive strike, the trade union leader Sikosana was arrested in Bulawayo, six further trade unionists were arrested in Gweru and only released after payment of a penalty. The speaker pointed out that the Committee on Freedom of Association had found that the arrest of trade unionists in this context, even briefly, was a fundamental violation of the right to freedom of association. The arrest of trade unionists in connection with their trade union activities related to the representation of their members constituted a serious interference into civil rights in general and in trade union rights. The present Government had only ratified Convention No. 87 in 2003. The question arose why the Government was not prepared to implement Convention No. 87.

Law and practice were, unfortunately, further than ever from being in accord with Convention No. 87. The Government should do all to implement the Convention, so that the workers of Zimbabwe and trade unionists could exercise their right of association without fear of repressive measures. She hoped that the Government would also be prepared to accept the offer of a direct contacts mission. This would be an important sign that the Government was prepared to cooperate with the ILO in the observance of Convention No. 87.

The Worker member of Brazil stated that the flagrant contradiction arising in the case of Zimbabwe was not between workers and the Government, but between a government of a poor and exploited African country and certain weighty superpowers which wished to continue to dominate and control the wealth of the planet. It exemplified the contrast between justice and injustice. For four consecutive years, the pretext for sanctioning Zimbabwe had been Convention No. 98. As had occurred the previous year, the report of the Committee of Experts clearly showed that there was no technical justification for Zimbabwe to appear on the list of the Conference Committee, although the pretext had changed, as the case now related to Convention No. 87. In reality, it was just a matter of finding a pretext to attempt to impose sanctions on Zimbabwe, which amounted to political interference that was totally beyond the principles of the ILO. She emphasized that the ILO could not let itself be taken over by the racial hatred of those who had upheld apartheid for centuries and who wished to continue dominating the land and wealth that belonged to the people of Zimbabwe. If it adopted this type of discrimination towards developing countries which were seeking to follow their own path, without respecting multilateral principles, the ILO would run the risk of becoming a political tool of the major powers which wished to impose their domination.

The Worker member of Nigeria stressed the solidarity between workers in different countries and between States. If his own and other African governments could live with strikes, they should encourage their sister government in Zimbabwe to do the same in the true spirit of sharing experiences. The speaker pointed out that the only job creation in Zimbabwe occurred in the informal sector and attempts by the ZCTU to organize them had been seriously hampered by the Government. This issue being at the heart of Convention No. 87, he called on the Government to stop interfering with the freedom of association, which was also detrimental to the prospect of social dialogue, and he asked the Government to fully respect the Convention and to engage in genuine social dialogue with the ZCTU.

The Worker member of Malaysia expressed his serious concern over the magnitude of the violations of Convention No. 87 and recalled that international trade union cooperation and solidarity were fundamental elements of the Convention. He recalled union-related workshops that had been broken up by the authorities. In this respect, he denounced the Government's deportation of international trade union delegations, including the General Secretary of COSATU, and urged the Government to immediately stop the repression of its own citizens and its interference against international trade union solidarity, to which the speaker himself had been exposed. He condemned the Government for its lack of respect for workers' rights and Convention No. 87.

The Worker member of South Africa noted that in most of Zimbabwe's neighbouring countries there was the freedom of association and the right to demonstrate. In her country, workers "toy-toyed" against everything they were unhappy about, a right enjoyed in most Southern African Development Community countries. She disagreed with the position of some government members that this case was a conspiracy by developed countries against Zimbabwe. This case was an unambiguous case of violation of Convention No. 87 and all countries should take a strong stand so that one day the workers in Zimbabwe could be free.

The Employer member of Zimbabwe stated that for the very first time the Government had instigated discussions with the social partners to bring about a turnaround in the economy. In his opinion, the present case stemmed from the Government's efforts to achieve macroeconomic stability. The Government had appeared several times before this Committee in connection with Convention No. 98 and this had resulted in certain steps to amend labour legislation, for which all social partners had to be complimented. However, the employers in Zimbabwe found the issues under discussion in this case too broad and distant from labour legislation. For example, the reference made to the POSA was connected to political issues. In addition, some cases referred to by the Committee of Experts dated back to 1997 while others were still pending either before the Committee on Freedom of Association or other authorities. The Zimbabwean employers did not feel comfortable to comment upon these pending cases. The speaker expressed his hope for stronger social dialogue which appeared to be developing through the tripartite Negotiating Forum and the National Economic Revival Council. He welcomed continued technical assistance from the ILO to facilitate the creation of an environment for business and investment to prosper and to create more wealth and employment.

The Government representative, in response to a comment by

the Worker member of Germany, indicated that no trade union leader had been imprisoned since 2004. He stated that while there existed the right to make a procession, the Government had also to protect private property and the rights of other persons. For this reason, the police in Zimbabwe prescribed conditions on ZCTU demonstrations, which were often violent. He stressed the efforts that had been made to address labour issues through last year's meeting with the social partners. It was hoped this dialogue would lead to the adoption of a protocol for the stabilization of income and prices. Regarding the postal workers who were dismissed, the speaker pointed out that the courts had upheld these dismissals, and this was the rule of law. This did not prevent a discussion of certain administrative matters for helping dismissed workers in this case, and the Government was willing to pursue such discussions. No specific fault could be found with Zimbabwean labour law, and even the ZCTU had hailed the Labour Act as progressive. The speaker maintained that, in his country, certain trade unions were agitating for the destabilization of the country and had an open political agenda. For example, permission had been given for a commemoration of occupational safety and health week, at which a senior official from his Ministry was to speak. Yet, the attendees all sported political T-shirts and caps, which was inappropriate for a trade union event. Demonstrations of this nature occurred as his delegation was about to depart for Geneva to attend the International Labour Conference, and the demonstrators hoped to gain international attention. As for the expulsion of foreign trade unionists from Zimbabwe, he pointed out that all countries had immigration laws which allowed sovereign States to determine who could enter their country. He concluded by stating that this was a politically motivated case. He hoped the issues in this case could be addressed through social dialogue and he welcomed any usual technical assistance from the ILO.

The Employer members expressed their appreciation for the reasoned tone in which the Government had addressed the issues in the present session. It was evident from the discussion that the Government did not understand the difference between protection of trade union rights by the Committee on Freedom of Association, the obligations under Convention No. 87, or the difference between Conventions Nos. 87 and 98. They recalled that the ratification of Convention No. 87 required law and practice to be brought into line with the Convention, including the protection of the civil liberties of workers' or employers' organizations. While the Government had engaged in social dialogue, this was not the same thing as freedom of association. Social dialogue was a means, however, through which the Government could solve the problem, with ILO technical assistance. They hoped the Government would accept technical assistance in this case.

The Worker members expressed their regret about the fact that a large number of African governments had supported the Government of Zimbabwe in its defiance of Convention No. 87. They declared they would not be intimidated and were resolved to continue their quest for the recognition of their inalienable fundamental freedoms, as enshrined in the African Charter of Human and People's Rights, which, in their view, was flagrantly betrayed by those members of the Committee that supported the Government of Zimbabwe. They also disassociated themselves from the Worker member of Brazil, whose assertions did not represent the trade union movement. The Worker members asserted their right to address all issues arising under Convention No. 87, explaining that these were directly linked to their ability to find work and ensure adequate working conditions. They recalled that in August 2001 three workers of the government-owned ZISCO Steel Company were shot dead during a strike calling for better working conditions and pay. Despite their repeated calls to President Mugabe to order an investigation into the deaths, no inquiry had been carried out up to the present day. The Worker members further condemned the Government for systematically "politicizing" all socio-economic issues legitimately raised by the ZCTU as well as for its systematic and abusive attacks on the ICFTU whenever it raised issues of fundamental rights. In their opinion, it would be an abdication of duty if the collective voice of labour remained silent in the face of violations. Every country had security laws, but not every country used these laws against legitimate trade union rights. They expressed the hope that the support demonstrated by the African countries for the Government of Zimbabwe was merely an act of public relations or diplomatic solidarity and that behind the scenes the same countries would encourage the Government to comply with the standards set out in Convention No. 87.

The Government representative stated that his Government had never turned down technical assistance from the ILO. It would not, however, accept a direct contacts mission. It would accept a strengthening of the Subregional Office in Harare.

Following a pause prior to the adoption of the conclusion, **the Workers members** wished to draw the Committee's attention to the unacceptable attitude of the Zimbabwean Government delegation – they had committed some intolerable verbal and physical aggression on certain Worker delegates and ILO staff. The Worker members demanded the Government's excuses for this behaviour, otherwise they would request the incident to be reflected in the *Provisional Record*.

Another Government representative stated that he was not familiar with any "incident" and he had no intention of apologizing to a purely vacuous intervention by the Workers.

The Committee noted the information provided by the Government representative and the debate that followed.

The Committee observed that the comments of the Committee of Experts referred to the use of the Public Order and Security Act (POSA) in the arrest of, and the placing of charges against, trade unionists and union officers by reason of their trade union activities, as well as the discretionary power granted to authorities to prohibit public meetings and to impose fines or imprisonment in case of violations of any such prohibitions. The Committee also noted that the Committee on Freedom of Association examined several complaints against the Government regarding these serious issues.

The Committee noted in the Government's statement that the cases of the Committee on Freedom of Association that had been referred to by the Committee of Experts were not new and concerned small and trivial matters and that they had not been raised by the social partners with the Government. It further noted in the Government's statement that the POSA did not apply to the exercise of legitimate trade union activities. Trade union meetings that did not have a political purpose could take place without interference.

The Committee also noted with concern, however, the information provided concerning the situation of trade unions in Zimbabwe, the abusive use of the POSA to ban public demonstrations and the barring of entry into the country of certain international trade unionists.

The Committee requested the Government to take measures to ensure that the POSA was not used to impede the right of workers' organizations to exercise their activities, or to hold meetings and public protests relating to government economic and social policy. The Committee emphasized that the exercise of trade union rights was intrinsically linked to the assurance of full guarantees of basic civil liberties, including the rights to express opinions freely, and to hold assemblies and public meetings. Like the Committee of Experts, the Committee recalled that the development of the trade union movement and the acceptance of its ever-increasing recognition as a social partner in its own right meant that workers' organizations must be able to express their opinions on political issues in the broad sense of the term and, in particular, that they may publicly express their views on the Government's economic and social policy. The Committee insisted that no trade unionist should be arrested or charged for legitimate trade union activities. The Committee requested the Government to consider accepting a high-level technical assistance mission from the Office aimed at ensuring the full respect for freedom of association and basic civil liberties not only in law, but also in practice. The Committee expressed the firm hope that, in the very near future, it would be in a position to note concrete progress as regards observance of the rights embodied in the Convention and requested the Government to send a detailed report thereon in time for the next meeting of the Committee of Experts.

The Government representative refused to accept the conclusions in their present form. He reiterated that the high-level technical assistance mission emanating from the Conference Committee was not acceptable, rather the Government was willing to accept the usual technical cooperation. He further pointed out that his delegation was aware of the difference between a high-level technical assistance mission directed by the Committee and the usual technical assistance.

The Employer members affirmed that the Minister had accepted to receive enhanced technical assistance.

The Worker members concurred with the statement of the Employer members. Technical assistance had been accepted several times during the Committee's present session. The envisaged high-level technical cooperation would be carried out by the Office, and not by this Committee. They, therefore, felt that the conclusions were not out of context.

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948
and
Convention No. 98: Right to Organise and Collective Bargaining, 1949

AUSTRALIA (ratification: 1973). **A Government representative** recalled that her Government had appeared before the Committee at its previous session in relation to Convention No. 87 and Convention No. 98. She expressed her Government's concern and disappointment that it had been called before the Committee once again, despite the limited comments from the Committee of Experts on Australia's most recent article 22 report, and the outcome of last year's consideration by the Conference Committee, whereby the Government agreed to continue dialogue with the Committee of Experts, something it had in fact undertaken. Moreover, Australia had recently enacted new and wide ranging workplace relations legislation. This had involved a revision of almost all the federal Workplace Relations (WR) Act. The reforms included an expansion of the federal jurisdiction so that the

federal laws now covered up to 85 per cent of Australian workers, compared to 50 per cent in the past. All members of the ILO and the supervisory bodies involved in the debate with Australia on this issue had been made aware of these changes. One consequence of these legislative reforms was that the comments of the Committee of Experts on Australia's workplace relations legislation were no longer strictly applicable, as they related to superseded legislation. In the Government's view, debating the detail of laws that were no longer in force raised questions as to the efficacy of the supervisory processes.

However, Australia wished to comment on the interpretation of instruments. The Committee of Experts had acknowledged in its most recent comments the Government's wish to continue a constructive dialogue on outstanding issues. However, constructive dialogue could only take place if both parties involved were willing to address the arguments presented by the other party. In this regard, it was noted that the Committee of Experts had chosen not to respond to the argument presented by the Government to the Committee at its 2005 session, concerning the appropriate interpretation of Convention No. 98. The point at issue was the view of the Committee of Experts that Article 4 of the Convention imposed an unqualified obligation to promote collective bargaining, and excluded the possibility of any other form of bargaining. Australia facilitated collective bargaining, but believed that parties should be permitted to pursue other forms of bargaining if they freely chose to do so. Resolution of this fundamental issue was essential if the present dialogue was to be productive. The Government had pointed out in its responses to the comments of the Committee of Experts, and before the Conference Committee in 2005, that Article 4 required measures for the encouragement and promotion of collective bargaining to be taken "where necessary", and that such measures were to be "appropriate to national conditions". The Government had also highlighted the fact that collective bargaining had been the norm in Australia for more than a century and that the superseded Workplace Relations Act did not give primacy to individual bargaining over collective bargaining. Consequently, the Government had argued that, as collective bargaining had been the historical norm in Australia, the availability of individual agreements as a choice among several industrial instruments could not be reasonably considered to contravene Convention No. 98. It was not appropriate to prohibit the availability of other forms of bargaining. Accordingly, in the language of Article 4, the legislation that was the subject of the Committee's comments was consistent with Australian "national conditions" and Australia was not in breach of that provision.

The Government representative reiterated her disagreement with comments made by the Worker members last year to the effect that it should simply accept the interpretation of Article 4 adopted by the Committee of Experts. The narrow interpretation of the scope of Article 4 that was being applied by the Committee of Experts was not supported by the *travaux préparatoires* for Convention No. 98. In fact, the *travaux préparatoires* gave firm support to the Government's argument. Examination of the report considered at the 1948 and 1949 sessions of the Conference revealed that the words "where necessary" were added to the draft Convention by the Office following a proposal to the Conference Committee. The report also showed that the Conference Committee that developed the Convention added the words "appropriate to national conditions" to the final draft, and reported to the Conference plenary that Article 4 was "drafted in terms designed to take account of the widely divergent conditions in various countries". The reasons behind the adoption of flexibility provisions in Article 4 could not be simply ignored. It was important that the Committee of Experts responded to this point and its particular interpretation of Article 4. The Committee of Experts had stated in its most recent comments concerning Australia that it "recalls that Article 4 of the Convention aims at the promotion of free and voluntary collective bargaining between employers or employers' organizations and workers' organizations". This comment did not acknowledge that Australia had questioned the Committee's position on the matter. As this issue went to the very core of the discussion between the Government and the Committee of Experts on Australia's compliance with Convention No. 98, the Government asked the Committee of Experts to respond to the Australian Government's argument.

Finally, the Government representative stated that her Government was prepared to work closely with the ILO with a view to resolving issues of interest that remained relevant following the enactment of the substantial changes to the Workplace Relations Act. To this end, the Government would respond in detail to the further comments made by the Committee of Experts and to comments made by the Australian Council of Trade Unions in its next regular report on Conventions Nos. 87 and 98, which was due in 2007.

The Worker members pointed out that the specificity of the case in question lay in a total of seven failures to comply with Conventions Nos. 87 and 98, which, at first glance, seemed to be hidden from view. This year, there was however some change; some provisions had been adapted, but new discriminations had been introduced. The Committee of Experts had provided a clear analysis, extending its observations to the jurisdiction of federate States and territories. Almost all the failures to comply related to the 1996 Workplace Relations Act. They were as follows:

(1) The 1996 Act, as well as another law dating from 1914 relating to crimes for a whole range of prohibited strikes, made any industrial action more or less impossible. The Committee of Experts had requested that all these provisions should be modified, as was the case in Queensland, which had repealed the provision that an organization whose members had taken part in industrial action that prevented or interfered with trade or commerce could be deregistered.

(2) Any worker who refused to sign an Australian Workplace Agreement (AWA) and opted for a collective contract was no longer protected from discriminatory acts by the Act of 1996, which was not in conformity with Convention No. 98, mainly Article 1 (anti-union discrimination) and Article 4 (obstacles to collective bargaining). The Australian Government claimed that AWAs were not in themselves anti-union. However, to be denied employment because of a refusal to sign such a contract and because one preferred a collective agreement was not considered discriminatory either by the Act or by relevant case law that considered that there was no working relationship between the two parties at the time. The Committee of Experts had clearly stated that the protection provided by Convention No. 98 also applied to the recruitment stage.

(3) On the issue of dismissals, the 1996 Act did forbid terminating the employment contract of a worker who refused to sign an individual contract, but wide categories of workers were excluded from this protection, including temporary, casual, pieceworkers or workers on probation. According to the Government, these exclusions were repealed by an Act of 2003, but this had not been confirmed. It appeared that some categories continued to be excluded for reasons relating to their employment conditions, or the size or the type of enterprise, a confused legal situation that required clarification.

(4) The Act also excluded protection from dismissal for anti-union discrimination for workers seeking to negotiate multi-employer contracts. The Committee of Experts stated that this was in fact discrimination as the social partners should be free to choose their level of negotiation.

(5) The 1996 law allowed employers to undertake collective bargaining with one or more trade unions, of which "at least one member" was employed in the enterprise. The employer could therefore choose the union with which it wanted to negotiate and therefore exert undue interference. The Committee of Experts pointed out that such provisions gave employers full discretion to interfere with trade union internal affairs, which was in flagrant contradiction with Article 2 of Convention No. 98.

(6) The 1996 Act clearly sought to favour, by different means, collective bargaining at the enterprise level and even individual negotiation: AWAs were given prevalence over collective agreements; the employer could directly undertake bargaining with non-unionized employees rather than with representative unions: sectoral agreements were subject to prior approval by the AIRC, whose policy it was to refuse them if they did not comply with public interest; and a new employer could choose the union with which he wished to negotiate for the coming three years. On this point, the Committee of Experts drew attention to the fact that one of the fundamental principles of Convention No. 98 was to promote free and voluntary collective bargaining between employers' and workers' organizations.

(7) In 2005, the Government announced new reforms which would provide more leeway and flexibility to employers at the workplace level. This year, it had made no comments on this point and had not sought ILO advice. Meanwhile, the reform had been passed and had already entered into force. Its content and scope would be described by the Worker member of Australia, but the least that could be said was that it did not go in the direction sought by the Committee on the Application of Standards.

The Employer members recalled that the Committee had discussed this case under Convention No. 98 several times since 1998 and noted that this year the focus had been expanded to Convention No. 87. In respect of both Conventions the Government was asked to provide its comments on the observations of the International Confederation of Trade Unions (ICFTU) and the Australian Council of Trade Unions (ACTU). In both cases, the Committee of Experts referred to the conclusions and recommendations made by the Committee on Freedom of Association in Case No. 2326, which dealt with discrepancies between the Building and Construction Industry Improvement Act 2005 and the Conventions. This reference was incorrect, as the Committee on Freedom of Association dealt with principles of freedom of association, while this Committee addressed the specific requirements of Conventions. With respect to Convention No. 87, the Employer members noted that the Committee of Experts' observation pointed to the need to amend several provisions relating to industrial action. In this regard, they recalled that the Employer members' position on the right to strike was well-known. As there was no consensus on the right to strike, it could not be included in the Committee's conclusions. They also noted that the Committee of Experts expressed satisfaction with relation to the amendments made by the Queensland Government to the Industrial Relations Act, removing subsection (b) of section 638 which provided that the full bench

was empowered to order the deregistration of an organization on the grounds that the organization or its members had engaged in industrial action that had prevented or interfered with trade or commerce. Further, the Committee of Experts requested the Government to indicate progress made in amending the secondary boycott provisions contained in section 222 of the Industrial and Employees Relations Act.

With respect to Convention No. 98, the Employer members noted that the Committee of Experts drew a connection between Articles 1 and 4 of the Convention, which, in their view, was not correct. Articles 1 to 3 dealt with matters relating to the right to organize, while Article 4 dealt with collective bargaining, which was a different issue. Article 4 provided for double flexibility as it called for measures to be taken which were "appropriate to national conditions" and "where necessary". This language had been included in the Convention because the negotiators intended to ensure that collective bargaining agreements were not the only acceptable form of how workers and employers related to each other. In the Employer members' view, the bottom line was that there should be effective recognition of voluntary collective bargaining between workers' and employers' organizations, without dictating the level of bargaining. Finally, the Employer members regretted that the Government did not seek to make a tripartite arrangement to avoid a discussion of the case at this session of the Committee.

The Worker member of Australia, speaking on the effects of the Work Choices Act on Australia's compliance with Conventions Nos. 87 and 98, stated that the country was a serial offender against ILO core standards. The passage of the Workplace Relations Amendment (Work Choices Act 2005) meant that Australia's longstanding failure to comply with its obligations had substantially worsened. Since 1997, the Committee of Experts had repeatedly observed that Australian legislation as reflected in the WR Act 1996 fell well short of meeting the requirements of Conventions Nos. 87 and 98. The 2005 amendment further limited the possibility of collective bargaining. In the case of Convention No. 87, the Committee of Experts' concerns about compliance centred on the right to strike. The restrictions on industrial action in support of multi-employer agreements had been extended; the matters which could be the objectives of industrial action had been restricted; all sympathy action was prohibited; and the prohibition of industrial action went beyond essential services. Even when legal authority for industrial action was obtained, the Government could seek an order to the effect that the bargaining period was terminated. In her view, there was effectively no right to strike in Australia. The Work Choices Act 2005 further narrowed the range of matters which could be the subject of industrial action and also provided the Government with the power to dictate what matters could be excluded from industrial action because of "prohibited content". The Government could also unilaterally terminate a bargaining period if such action was deemed likely to damage the economy.

In reviewing Australia's compliance with Convention No. 98, the Committee of Experts was particularly critical of many aspects of Australian law. In its 2005 observation, the Committee of Experts had asked the Government to report any measures taken or contemplated to address its concern that a collective agreement made subsequent to an AWA could prevail over it only after the expiry date of the AWA. The Committee noted a "special issue" in that workers deciding to join a union would not benefit from the collective agreement. In her view, the Work Choices Act only provided that a collective agreement had no effect if an AWA was in place, irrespective of whether the AWA was made before or after the collective agreement and of the period of operation of the collective agreement. This primacy given to AWAs made the ability of unions to collectively bargain ineffective, and the extension of the period of operation of an AWA from three to five years only worsened matters. The Work Choices Act gave employers the freedom to refuse collective bargaining and added restrictions on industrial action, as well as sanctions for unprotected action. As to greenfields agreements, the speaker indicated that employers could effectively bargain among themselves to ensure that collective bargaining never took place. The Act also failed to provide protection to workers who refused to negotiate an AWA and who insisted on collective bargaining, which the Committee of Experts held to be contrary to Articles 1 and 4 of Convention No. 98. The speaker concluded that the Government's refusal to address the concerns of the Committee of Experts deserved strong condemnation by the Committee and the Conference.

The Worker member of Germany recalled the deep concerns expressed by the Committee on Freedom of Association over the serious violations of trade union rights in Australia. She agreed that in the construction sector a number of problems, such as illegal work or dumping, had to be addressed, but it was surprising that a democratic country such as Australia would adopt measures such as the 2005 Building and Construction Industry Improvement Act. Further, the Government ignored the recommendations of the Committee on Freedom of Association concerning the 2003 legislation. Under the 2003 and 2005 legislation, generally applicable penalties and sanctions could be increased 11 times if they were imposed in relation to negotiations with several employers that led to a multi-employer agreement, to sympathy strikes or to secondary boycotts. In cases where employers or other persons sought damages for harm suffered as a result of industrial action, the burden of proof had been put on the defendant. Because the current legislation did not permit multi-employer agreements, the Committee on Freedom of Association and the Governing Body had called on the Government to amend the legislation and to bring it into conformity with Conventions Nos. 87 and 98. Accordingly, trade unions should also be able to take industrial action in relation to multi-employer agreements. The current practice which gave preference to AWAs was contrary to Convention No. 98. The Committee of Experts rightly requested legislative changes to ensure that unions were negotiation partners where they existed and that collective negotiations did not cover only strike pay. Further, it was not acceptable that multi-employer agreements were subject to approval by the Australian Industrial Relations Commission (AIRC). Regarding the situation in the construction sector, the speaker stated that the Australian Building and Construction Commissioner had powers to interfere in internal trade union matters. Failure to supply information or documents could be punished with up to six months of imprisonment, which was out of proportion. The existing problems in this sector could not be solved through single-handed penalization of the workers. In this context, she recalled the recommendations of the Governing Body that comprehensive tripartite negotiations should take place on these matters. In Germany, a number of problems of common concern in the construction sector were successfully resolved through tripartite negotiations. Finally, she called on the Government to implement the recommendations of the ILO's supervisory bodies and to make the necessary legislative amendments.

The Employer member of Australia thanked the Committee of Experts for its report. He observed that the present case involved issues that were not new, but related, rather, to concerns with the WRA that the Committee of Experts and trade unions had first expressed some eight years ago. As the Government and the Committee of Experts continued to be apart on the interpretation of certain aspects of Conventions Nos. 87 and 98 in the Australian context, there was little new to add to this discussion, which furthermore concerned a law that had been substantially amended since the Committee of Experts' 2005 observation. He noted that the WRA had, in both its objective and substantive provisions, important references to international labour standards in the Australian national context of introducing flexible working arrangements to the labour market. He pointed out that developments in the Australian system, in law and practice, had resulted in outcomes that directly gave effect to the ILO's overall mission of removing disadvantage through decent and productive employment; unemployment had been halved to almost 5 per cent; wages had risen significantly in real terms; more people than ever before, including women and migrant workers, were employed; there was a well-skilled and educated workforce; and industrial disputes were at an all time low.

The speaker noted that the enduring difference in opinion on the scope of the right to strike, as established by Convention No. 87, stemmed from the fact that the Convention itself made no express reference to that particular right. He recalled that the Employer members did not share the Committee of Experts' view on the right to strike, nor did they agree with the proposition that the WRA was in breach of Convention No. 87 on this particular point. Australian law established a right to strike in every collective bargaining dispute at a single business level, but not in the case of multi-employer disputes. Strong policy reasons existed for this – strikes damaged economic interests and cost jobs – and to allow the right to strike, to shut an entire industry down, might gravely damage the community and the labour market, thus weakening the very base on which jobs in that sector were founded. The speaker observed that the Employer members also departed from the opinion of the Committee of Experts on the subject of sympathy strikes. The fact that Convention No. 87 did not expressly provide for the right to strike meant that governments enjoyed sufficient latitude to place limits on its exercise, according to national circumstances, and prohibitions on sympathy strikes were one such circumstance. The Employer members considered that it was more consistent with the language of the Convention to restrict the right to strike to disputes between the parties to the employment relationship. Additionally, the same policy reasons for prohibiting multi-employer industrial action, namely preserving industries and labour markets from serious disruption, also justified the prohibition on sympathy strikes.

Noting that Article 4 of Convention No. 98 only required measures "appropriate to national conditions" to be taken "where necessary" to encourage voluntary negotiation of collective agreements, the speaker expressed the view that the AWA provisions of the Australian law were fully consistent with that requirement, as they allowed for individual employment agreements while, at the same time, promoting and giving equal access to the conclusion of collective agreements. Furthermore, the flexibility implied by the phrases "appropriate to national conditions" and "where necessary" meant that governments enjoyed a significant degree of discretion in regulating the relationship between individual employment contracts and collective agreements. A number of systems and regulatory models could be fashioned, without necessarily running counter to the Convention; the AWA system was one such example.

The Worker member of the United States recalled that freedom of association was at the heart of democracy, and the right of workers

to form their own labour organizations and engage in meaningful collective bargaining was at the heart of freedom of association. These rights were reflected in Conventions Nos. 87 and 98. It was unacceptable for any member State to violate core ILO standards, yet this was what Australia continued to do under its law, according to which employers had the right to refuse to bargain collectively, contrary to the will of the majority of workers at a workplace. Australia's initiative would put pressure on other nations to act similarly and placed multinational enterprises, some of which were willing to extend the right to their workers, in an untenable position. In a global economy, such violations of freedom of association had wide implications and posed serious questions for trade agreement negotiations. The stakes presented by this case were high if infringements on basic rights continued.

The Worker member of Japan expressed full support for the statement made by the Worker members. The Committee of Experts and the Committee on Freedom of Association had made clear and unambiguous conclusions that the Government of Australia had been seriously violating Conventions Nos. 87 and 98. He expressed disappointment that a socially and economically well-developed country such as Australia continued to violate these fundamental human rights, even in the face of strong recommendations to the contrary by the ILO supervisory bodies. The speaker noted with regret that no consultation with trade union representatives had taken place to discuss the revision of the legislation in question. He also expressed deep concern regarding the apparent policy of the Government not to consult or negotiate with trade unions and to practise anti-union discrimination. Consultation with social partners was a fundamental principle of the ILO and should be the guiding principle upon which day-to-day decisions were made. The speaker recalled the case of his own country, in which, after recommendations from the ILO, the Government had set up a special mechanism to encourage full and meaningful consultation with public sector trade unions. He urged the Government of Australia to implement the recommendations of the Committee of Experts in demonstration of goodwill and cooperation with the ILO. Violations of fundamental rights and the denial of democratic due process could not be permitted.

The Worker member of the Netherlands noted that one of the recurrent issues in this case related to the right to strike and that the Committee of Experts had been insisting that the Government made legislative changes. The Government had been consistently defiant, which was prejudicial to the ILO supervisory bodies and their work. However, he was pleased to note that some authorities in Australia took a different attitude. The legislative changes in Queensland were one of the very few encouraging elements of the case, which should be included in the conclusions. The right to strike was the most difficult issue to discuss under Convention No. 87, the main reason for this being a change of attitude of the Employer members who held the view that it was not covered by the Convention. The Employer members, for many years, however, had shared the views of the Committee of Experts on this issue by supporting the workers in difficult debates, sometimes even taking the lead in urging Soviet regimes to respect the right to strike and to stop criminalizing genuine union activities. To argue that this happened only because of the Cold War would undermine the credibility of the ILO and its supervisory bodies, since fundamental principles should not change along with changes in the political environment. The Committee should be careful in cases, such as the one under discussion, in order to ensure that the Convention and the principles embodied in it remained unimpaired in the future as an effective instrument to defend democracy and workers' rights.

The Worker member of New Zealand shared the concern of the Worker members that the Government of Australia had not only failed to take measures to ensure compliance with Conventions Nos. 87 and 98 but had, subsequent to the last report of the Committee of Experts, passed legislation compounding and extending the breaches of these fundamental Conventions. Australia had effectively turned away from a long tradition of tripartite cooperation to anti-union legislation. He compared the Australian Work Choices Act with the Employment Contracts Act in force in New Zealand between 1991 and 2000, which had dramatically reduced collective bargaining during a period when the disparity between rich and poor had risen quicker than in any other developed country. The two pieces of legislation were comparable in placing restrictions on strike action, especially in support of multi-employer collective agreements; giving primacy to individual agreements; and restricting the rights of unions to represent their members in collective bargaining. He believed that the Australian Work Choices Act actually went further in restricting, undermining and frustrating collective bargaining by legitimate workers' organizations and shifted the balance even further in the employer's favour.

The Government representative thanked the Committee's members for their statements. She noted that many of these comments were outside the scope of the matters being considered by the Committee and indeed some were factually incorrect. The Worker members had argued that the same issues continued to arise under the new legislation. However, the new work relation legislation could not be considered in isolation, as the matters raised in the Committee of Experts' observation should be seen in the context of the whole of Australia's unique workplace relations system. Her Government stood ready to work with the Committee of Experts and the Office on the pending matters.

The Worker members deplored the fact that the Government, which had still not provided the information requested by the Committee of Experts on the reform of labour legislation, accused others of lack of knowledge and understanding. The Worker members objected to the simplistic interpretation of Convention No. 87 given by the Employer members with regard to the right to strike, which they refused to consider as an integral part of freedom of association. The Worker members reaffirmed the link between Articles 1 and 4 of Convention No. 98 and stressed that any discrimination in respect of a trade union jeopardized all possibility to conduct collective bargaining freely. The Australian Government had not provided information concerning legislative reforms requested last year and had not requested the ILO's opinion on the matter. They noted that on the contrary, the Government affirmed that the problem lay in the interpretation of Convention No. 98 and stated that Australian legislation did not prevent collective bargaining but simply did not promote it. It should be recalled, however, that Convention No. 98 expressly provided that public authorities should encourage and promote voluntary collective bargaining. The Worker members underlined that, in the case of Australia, the Committee of Experts had revealed certain legislative provisions, which, on the one hand, enshrined anti-union discrimination and, on the other, prevented collective bargaining. They underlined the importance which this case represented for the fundamental principles of the ILO and the trade union movement in the world. The Worker members stated that the Government should be requested to provide to the Committee of Experts a detailed report concerning the new legislation. They further considered that if the Committee of Experts was to conclude that this new legislation was to the same effect as the previous one, the case of Australia should be examined next year for the third consecutive year.

The Employer members stated that the Government needed to provide information to the Committee of Experts on the new legislation to which it had referred in its statement. They considered that individual companies should not be named in submissions made to the Committee, which had the mandate to discuss the application of ratified Conventions and the measures taken by the Government to this effect. The focus of the discussion had almost exclusively been on Convention No. 98 which should be reflected in the conclusions. Clarifying their comments on the changes in the Queensland legislation, the Employer members stated that they had merely noted these changes without taking a position on their substance. Finally, they reiterated their position concerning the right to strike in the context of Convention No. 87 and insisted that this position had remained unchanged.

The Committee noted the statement by the Government representative and the debate that followed. The Committee recalled that the Committee of Experts had been making comments for several years on certain provisions of the Workplace Relations Act, particularly in relation to restrictions on the right of trade unions to exercise their activities, the exclusion from the scope of application of the Act of certain categories of workers, the limitations on the scope of union activities covered by protection against anti-union discrimination and the relationship between individual contracts and collective agreements. The Committee of Experts had also noted discrepancies between the Building and Construction Industry Improvement Act 2005 and the provisions of the Convention.

The Committee noted the Government's statement that the federal legislation criticized in the Committee of Experts' report had been significantly amended and thus the Experts' comments were no longer strictly applicable. It further noted the Government's statement that this legislative reform needed to be reviewed within the context of the workplace relations system as a whole and that it stood ready to assist the understanding of the Committee of Experts in this regard.

The Committee noted that the Workplace Relations Act had been amended by the Workplace Relations (Work Choices) Act 2005. It observed, however, with regret that, while this Committee had requested the Government to transmit copies of all draft laws that might relate to the application of the Convention to the Committee of Experts, this had not been done. It also noted certain concerns raised in respect of a lack of prior consultation on this legislation.

The Committee also noted that serious concerns were raised in respect of the impact that the new legislation would have on the application of the provisions of Conventions Nos. 87 and 98, and in particular the effect that this Act would have on collective bargaining.

The Committee requested the Government to provide a detailed report to the Committee of Experts for examination this year on the provisions of the Workplace Relations (Work Choices) Act 2005 and its impact, both in law and in practice, on the Government's obligation to ensure respect for freedom of association and, in particular, the promotion of the effective recognition of the right to collective bargaining in Australia. It requested the Committee of Experts to examine the conformity of the newly adopted legislation with the Conventions concerned. The Committee requested the Government to engage in full and frank

consultations with the representative employers' and workers' organizations with respect to all the matters raised during this debate and to report back to the Committee of Experts in this regard.

Belarus (ratification: 1956). The Government communicated the following written information on the implementation of the recommendations of the Commission of Inquiry established to examine the complaint concerning non-observance by Belarus of the Freedom of Association and Protection of the right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Republic of Belarus has ratified all eight fundamental ILO Conventions (Nos. 29, 87, 98, 100, 105, 111, 138, 182), and affirms its adherence to the fundamental principles of the ILO Declaration of 1998. The right of association, including that of trade unions, is guaranteed by the basic law of the State – the Constitution of the Republic of Belarus (article 36). The rights of trade unions are specified in the Law on Trade Unions of the Republic of Belarus. It reflects the principles of the ILO Convention No. 87 as well as of the ILO Convention No. 98. The law guarantees the right of workers to create trade unions on a voluntary basis and join them (article 2); the right of trade unions to independently elaborate and approve their charters, to define their structure and to elect leading bodies (article 3); cease their activity (article 5). According to article 26 of the law, illegal constraint of the rights of trade unions, as well as creation of impediments for the implementation of their authority, are prohibited.

The efficiency of these legal provisions is confirmed by the fact that workers in Belarus are actively using their right for freedom of association. Over 90 per cent of employees in our country are members of trade unions. The legislation of Belarus provides trade unions with ample powers in advocating the rights and economic interests of workers, ensures their active participation in the life of the State and in forming the social and economic policy. The trade unions take part in the elaboration of issues which are of key interest for the workers: the state programme on employment, resolution of issues related to social insurance and labour protection also exercise public control over compliance with labour legislation. The legal provisions that regulate social and labour rights of workers are drafted with obligatory participation of the trade unions. The consideration of interests of workers is an indispensable requirement of the Government in the process of progressive movement of the country towards socially oriented market economy. In the process of elaborating the ways of implementation of the chosen social and economic model, Belarus takes into account worldwide experience and recommendations of the competent international organizations.

On the basis of these principles, the Government of the Republic of Belarus has been implementing the ILO Commission of Inquiry (CoI) recommendations. Taking into consideration the complex character of the CoI recommendations, the Government of Belarus has adopted a special action plan aimed at their implementation. The ILO is regularly provided with the information on its approval and fulfilment. The recommendations have been disseminated within the country, inter alia, by publishing of their text in the magazine "Labour and Social Protection" of the Ministry of Labour and Social Protection of the Republic of Belarus.

A number of specific steps aimed at their implementation have been made. The Ministry of Labour and Social Protection has addressed a letter on development of social partnership and adherence to its principles which provides a detailed explanation of norms of national legislation as well as of international norms that define the principles of cooperation between the social partners and exclude interference of both the employers and trade unions into the internal affairs of each other. The letter was directed to all state administrative bodies and other organizations subordinate to the Government (47 addresses in total). The state bodies have taken the necessary steps in order to convey the letter of the Ministry to specific enterprises within their system. For example, the Ministry of Industry of the Republic of Belarus has directed this letter to all industrial plants subordinate to this Ministry (over 230 enterprises), as well as held a panel meeting in this regard with representatives of administrations of the main industrial entities. The letter of the Ministry of Labour and Social Protection was also reviewed at the joint panel meetings, held with participation of representatives of both the enterprise administrations and the trade unions. The issue of promoting this letter at enterprises was also discussed by the experts of the International Labour Office during their mission to Minsk, which took place in the period 16-19 January 2006. The Belarusian side rendered to the ILO the copies of letters and minutes of panel meetings dedicated to reviewing the letter of the Ministry at the concrete enterprises of Belarus.

There is constant control over the use of the contract system of employment in the country, and measures are taken in order to prevent any discrimination of employees as well as to compensate any wrongdoing in case of violations. Throughout 2005, the courts of Belarus have held hearings on 3,485 cases of cancellation of employee dismissal and wage disputes, of which 1,302 were related to restitution of employee status, and 2,183 were related to wage repayment. Some 408 lawsuits on restitution of employee status were satisfied, making up 31.3 per cent of the total. Court decisions have led to restitution of employee status for 359 people with compensation for the induced leave. Out of 2,183 lawsuits on wage repayment, 1,679 (76.9 per cent) were satisfied. During the abovementioned period, 24 cases on restitution of status, wage payout and cancellation of disciplinary penalty filed by trade unions or by employees supported by trade union representatives were heard in courts, of which seven were satisfied, four ended in compromise and 13 were dismissed. The interests of workers were defended in court also by representatives of the Free Belarusian Trade Union, the Belarusian Trade Union of Electronic Industry Workers, the Free Trade Union of Metal Industry Workers, the Mogilev Regional Organization of the Belarusian Trade Union of Workers of various forms of entrepreneurship "Sadrujnasc". The discrimination in the sphere of labour relations (including conclusion of contracts) based on the participation of a worker in trade unions is prohibited by article 14 of the Labour Code of the Republic of Belarus and by article 4 of the Law on Trade Unions of the Republic of Belarus. The employer's decision to conclude a contract with an employee, based on the fact that the latter belongs to a trade union, is illegal.

In 2005, the Department of State Labour Inspection Service of the Ministry of Labour and Social Protection conducted verification of legal compliance in the process of conclusion (prolongation, termination) of contracts with 2,099,148 employees in 1,589 state organizations and with 76,839 employees in 862 private enterprises. According to the verifications, employers were given instructions to correct the fixed violations; sanctions in the form of a fine were applied to 356 employers, 153 employers were warned about the inadmissibility of labour legislature violations, 302 officials were brought to administrative liability, and some other 15 – to disciplinary punishment. The verification process demonstrated that the main causes of the violations committed in the process of transition to the contract system of employment are either the ignorance of the legal norms in force or the failure to provide adequate application of legislation, as well as the lack of necessary funding. The analysis of the situation showed that the abovementioned legal violations are not of mass character; the conclusion of contracts, as well as the transfer to the contract system of employment of workers that are employed on the basis of contracts without predefined duration, is mainly conducted in compliance with the legislative norms. No facts of discrimination of employees on the basis of their membership in trade unions in scope of contract conclusion were found during the verification process.

It is necessary to note that the development of an efficient judicial and law enforcement system is among the key priorities of the Republic of Belarus. The difficulties related to the implementation of this task are common for every young state which is struggling through the transitional period. The Belarusian side will further monitor the efficiency of protection against discrimination of trade unions. The Ministry of Labour and Social Protection of the Republic of Belarus has created an expert council on issues of improving the legislation in the social and labour sphere. The council includes representatives of the Belarusian Congress of Democratic Trade Unions (BCDTU), the Federation of Trade Unions of Belarus (FTUB), associations of employees, non-governmental organizations and the scientific community. There are two members representing the trade unions within the Council (from the FTUB and the BCDTU).

The work on other issues is also under way in the country. The Belarusian side will elaborate the changes within the national legislation that envisage the following: the possibility of the creation of trade unions at enterprises which shall not be subject to the requirement to include no less than 10 per cent of enterprise employees; the procedure of registering trade unions will be simplified, in particular, the requirement to submit information on the existence of a legal address will be cancelled; and any influence on the procedure of trade union registration on behalf of the State Commission on Registration will be excluded. The registration of specific trade unions will depend on their readiness to go through the registration procedure in compliance with all the requirements set by the legislature.

The procedures of work of the National Council on Labour and Social Issues was improved in November 2005. Its new regulations were adopted, thus providing the possibility for participation in the work of the Council for all associations of employees and trade unions concerned (including those that could not acquire a seat within the Council due to insufficient level of representation). The new regulations commit the associations that take part in the Council to respect the rights of other associations which are not represented within the body. Moreover, the new regulations do not set any limitations on the inclusion of new representatives of trade unions who are not members of the Federation of Trade Unions of Belarus into the Council of Trade Unions. According to the regulations, the FTUB, in the spirit of goodwill, provided one of the seats which is at its disposal in the Council to a representative of the BCDTU. The FTUB informed about this decision the BCDTU and the International Labour Office in February 2006. However, the BCDTU has ignored this move.

It is necessary to draw attention to the indistinctness of the wording of some ILO Recommendations. In particular, the creation of "an independent body, which will be trusted by all sides", which is stated in Recommendation 5, is objectively impossible due to the existing contradictions between the parties of the conflict. Providing "trade union personnel with administrative arrest immunity", as stated in

Recommendation 8, would mean violating the rules of procedure of the national legal system, which is based on equality of all citizens in the face of the law. In Belarus, just as in other countries of the world, the immunity from a number of procedural actions is provided only in exceptional cases – such as the occupation of important elective governmental posts (for example, to the members of the National Assembly). The authorization of immunity to trade union activists will lead to the creation of a privileged class of citizens, which contradicts the basics of governmental structure of any democratic state.

At the same time, the Belarusian side does not refuse to follow these recommendations and is ready to use the consultative assistance of the International Labour Office in their interpretation and implementation. Belarus expresses its hope that the information provided herewith, as well as the readiness of the Government of the Republic of Belarus for constructive cooperation with the ILO to improve the situation with "the rights of trade unions" in the country, will be well taken into consideration in making the decisions and further recommendations by the ILO Members.

In addition, before the Committee, **a Government representative** (Deputy Minister of Labour) stated that the recommendations of the Commission of Inquiry were of a general and declaratory nature. She disagreed with the Office's assertion that the recommendations of the Commission of Inquiry were clear and could easily be implemented. Referring to recommendation No. 4, which urged the Presidential Administration to instruct the General Prosecutor's Office, the Ministry of Justice, and the courts to investigate all allegations of interference in trade union affairs, she observed that this approach ignored the basic principle of separation of powers. As for recommendation No. 5, which called upon the Government to ensure that all subsequent complaints of interference were examined by an independent body having the confidence of all parties concerned, it was unclear as to which bodies, exactly, were to carry out these functions. Furthermore, the fact that all trade unions, whether affiliated with the Federation of Trade Unions of Belarus (FPB) or not, freely brought cases before the courts was clear proof of their confidence in the legal system. In 2005, non-FPB-affiliated unions brought 17 cases before the courts; of these cases, the unions won 11. Unions also successfully petitioned the Prosecutor's Office in order to secure their rights under the law.

The Government intended to conduct a series of seminars for the judiciary and the Prosecutor's Office on freedom of association rights, as set forth in national and international law. Other measures were also being formulated, with practically no assistance from the Office. To implement the recommendations, a plan of action was formulated and communicated to the ILO. Work was now being carried out in accordance with this plan; as a result, some of the recommendations were already implemented. The recommendations were published in the gazette of the Ministry of Labour and Social Protection, which enjoyed a wide circulation. To implement recommendation No. 6, a special letter of instruction was drafted. This letter explained the principles of social partnership and non-interference of employers' and workers' organizations in each other's affairs; it was sent to the various state bodies – 47 in all. These state bodies, in turn, distributed copies of the letter to various enterprises. Finally, meetings were held between managers and trade union bodies to discuss the instructions contained in the letter. A copy of this letter, along with other documents, was sent to the Committee on Freedom of Association. With regard to recommendation No. 7, on the discriminatory use of fixed-term contracts, the State Labour Inspectorate conducted investigations into the alleged unjust terminations. It did not find evidence of discrimination in any of the terminations; their findings were subsequently affirmed by the courts. In one case, in fact, the worker in question had voluntarily resigned after he was caught stealing from the enterprise. Exhaustive information relating to these investigations, including copies of the verdicts rendered in all cases, were submitted to the Committee on Freedom of Association.

Until recently, the National Council on Labour and Social Issues (NCLSI) had operated without clearly defined procedures. The Commission of Inquiry had recommended that the Government should take measures to ensure that trade unions not affiliated with the FPB could participate in the work of the NCLSI. This recommendation, it was understood, did not require that all non-FPB unions be granted a seat in the NCLSI, which at any rate would not be possible. The reason was that each social partner had 11 seats attributed to it. As non-FPB-affiliated trade unions represented only a very limited number of workers, the Government considered it unjust to allow them representation in the NCLSI. The Government had studied the international situation on representativity and adopted a new regulation on the NCLSI. The requirement now was for a minimum union membership of 50,000. At the same time, in order to ensure participation in the work of the NCLSI of trade unions and employers' organizations that were not members of the Council, the regulation provided that such organizations had the right to receive documentation, participate in its meetings and in the implementation of its decisions. There now existed, therefore, a clear and transparent mechanism for tripartite participation based on the universally accepted principle of representativeness; recommendation No. 11 was as such fully implemented. The Committee of Experts, in its observation on the application of Convention No. 144, alleged government interference in the appointment of the representative of the Belarusian Congress of Democratic Trade Unions (CDTU) to the group of experts on the application of international labour standards. This group was established in 2002, and comprised representatives from various ministries, academics, and the most representative of trade unions and employer organizations. The CDTU was not a member of this group, but was occasionally invited to attend its meetings. In July 2005, a lawyer from the CDTU was invited to attend a meeting of the group of experts; to the Government's surprise, this led to the accusation, by the CDTU, of interference in its affairs. In spite of this charge, the CDTU appointed a representative to participate in a May 2006 meeting of the group of experts.

In response to the Commission of Inquiry's recommendation No. 12, the Government had set up an expert council to formulate amendments to the national legislation. All relevant information relating to this council was submitted to the Committee on Freedom of Association. As for the issue of trade union registration, a trade union law was being drafted that would deal with this matter while taking into account the national interest and ensuring the application of the Convention. All trade unions participated in the drafting of the new legislation. In 2005, the Conference Committee requested the Government to accept an ILO mission, without however suggesting a specific date. The Office then proposed September 2005 as a possible date, which was countered by the Government's offer to host the said mission in December 2005. The ILO Executive Director responsible for Standards and Fundamental Principles and Rights at Work, referring to the heavy workload of the Office in December, suggested that the mission be held in January 2006, which the Government accepted. The mission was undertaken in January 2006 and various consultations and meetings were held. The Government was counting on the technical assistance of the ILO to implement the remaining recommendations. In this connection, the Government had requested ILO assistance in organizing three seminars on the following issues: trade union registration; social dialogue; and the establishment of a protective mechanism to ensure trade union rights. This proposal enjoyed the support of the social partners, including the FPB and the CDTU. During the January 2006 mission, an agreement was reached to hold the said seminars. In March 2006, at the 295th Session of the ILO Governing Body, the Government submitted a letter from the social partners on the necessity of conducting these seminars. However, in April 2006, the ILO indicated in writing that it would not be possible to conduct these seminars. The Government expressed its disappointment at this response, as it considered that each member State had the right to benefit from ILO technical assistance. The speaker concluded by stating that it would continue to look for points of convergence with respect to the resolution of these issues; at the same time it was continuing the work already commenced to implement the Commission of Inquiry's recommendations.

The Worker members thanked the Government for the written information submitted to the Conference Committee and for its statement. The Worker members would like to examine and be able to provide detailed written comments on all of the elements presented by the Government so that the Committee of Experts could examine them at its next session, and requested the Government to provide them with the full text of the intervention. The Committee of Experts played an important role in the defence of human rights in the world, though the fact that the generally technical and legalistic language used in its observations often made it difficult for interested parties outside the ILO to fully grasp this role. However, on rare occasions the Committee of Experts resorted to language that demonstrated that its members were human beings capable of reacting in a less detached way to gross injustices. The Committee of Experts acted in this manner in this case when it said that it feared that the legislative proposals currently being considered by the Government might result in the elimination of any remnants of an independent trade union movement in Belarus. This was the key element of this case. While recognizing the critical points in the Committee of Experts' legal analysis, the legislation was only one part of the problem. In fact, the Government had been very active in rendering the life of trade unions as difficult as possible. All information before the Conference Committee suggested that the situation as described in the Commission of Inquiry's report, some years ago, had not changed for the better and that the Government had not taken meaningful action to implement the Commission's recommendations, eight of which should have already been implemented more than a year ago. On the basis of a very careful analysis, the Committee of Experts had noted with regret in December, when they wrote their report, that no specific steps had been taken to implement these recommendations. Six months later, still no progress had been made. If the information provided referred to some action taken, the Government gave just indications without any documents to substantiate them. This was, for instance, the case with the letter of instruction on interference in trade union affairs. The Committee of Experts had repeatedly urged the Government to take the steps long overdue, but the Government failed to report on any concrete steps taken, both in its latest report to the Committee of Experts and in its written and oral submission to this Committee. The Worker members deeply regretted that the Government had not provided full particulars on the matters raised by the Committee of Experts, as requested. The information provided referred to measures

that might possibly have been taken, without giving concrete details or specific dates. However, the Committee of Experts would have to further examine all the information provided today. The Government should commit itself to finally providing exhaustive and properly documented answers to the numerous questions raised by the Committee of Experts.

The Worker members had strong doubts whether the means normally recommended by the Committee of Experts could assist in realizing progress in this case. A mission had already been carried out but the Government had still not taken the required action. Technical assistance only had an impact where there was a willingness to work together to solve problems. A special paragraph had already been included in the Committee's general report and even a Commission of Inquiry had been established. Finding solutions through social dialogue at the national level would also be illusory, as social partnership in Belarus was so intensely dominated by the Government, and the independence of its major counterparts was so questionable, that such an approach would not be compatible with the ILO's conception of tripartism. As the Government was apparently not interested in meaningful dialogue with the Conference Committee, the Worker members believed that the ILO had a responsibility to look into the small range of remaining options. Anything else would be unfair to all those governments who were ready to cooperate and find, jointly, the road to progress.

The Employer members noted that the present case had a long history in the Committee, having first been discussed in 1991. In the intervening years, there had been numerous discussions on these same issues, yet no progress could be observed. Commissions of Inquiry were rarely established; the article 26 constitutional procedure establishing these commissions was resorted to only in exceptional instances. Recalling a statement made by the Government in 2005, to the effect that the Commission of Inquiry's recommendations needed to be adapted to national conditions, they regretted to note that the Government had, in essence, repeated this same assertion. The Employer members expressed astonishment at the Government's statement that they had received little assistance from the ILO, considering that the ILO had undertaken a mission to Belarus as recently as January 2006. The Government had stated that it was searching for points of convergence with the ILO on the resolution of the present case. It was difficult to believe, nevertheless, that the failure to resolve the present issues could be attributed to confusion on the Government's part. Democracy and respect for freedom of association rights were intrinsically linked; this was perhaps the true reason for the lack of progress thus far. The Employer members recalled that the Commission of Inquiry had issued 12 distinct recommendations to bring about compliance with the Convention that called, inter alia, for independent investigations into allegations of anti-union discrimination, as well as legislative amendments to facilitate trade union registration. These issues had been before the Committee for the past 15 years. The Employer members concurred with the Worker members in acknowledging the seriousness of the present case and urged the Government to implement the Commission of Inquiry's recommendations without further delay.

The Worker member of Belarus, on behalf of the Federation of Trade Unions of Belarus (FPB), felt that two sets of issues should be looked at when dealing with the application of freedom of association Conventions in Belarus: firstly, whether the Government of Belarus violated workers' rights, and secondly, whether the Government had implemented the recommendations of the Commission of Inquiry. The speaker pointed out that there were 32 trade unions in Belarus. Twenty-nine were affiliated to the FPB, representing over four million workers, while the three others represented in total about 5,000 workers. Since the complaint was submitted to the ILO in 2000 by four trade unions, the situation in Belarus had changed, including the unions themselves. Accordingly, some complainants withdrew their complaint. In his opinion, the unions enjoyed broader rights and took active part in the settlement of social and labour issues through participation in labour inspections and in the process of improvement of national legislation. Upon the initiative of the FPB, a general tariff agreement was signed, check-off facilities restored and wages increased. He considered that the Government had changed its approach and in most of the cases, agreed with the suggestions of the FPB. He stressed that all FPB achievements extended to other unions as well. He therefore concluded that the Government did not violate workers' rights. Moreover, he considered that workers and trade unions in his country enjoyed more rights than anywhere else. As for the seats on the NCLSI, he considered that it was only fair that an organization representing four million workers would have all the seats. As for the implementation of the recommendations of the Commission of Inquiry, the speaker stated that a number of issues had been settled and the new legislation, which would be shortly adopted, would settle the remaining issues. He stressed that the FPB was independent from the Government. Any sanctions, if taken, would not help Belarus but rather would harm workers and their families. He admitted that while some problems remained, to harm the interests of four million worker members of the FPB, in order to satisfy the interests of minority unions, was simply unjust.

The Government member of Austria took the floor on behalf of the Governments of the Member States of the European Union; the Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia, and The former Yugoslav Republic of Macedonia, the countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, Serbia and Montenegro, as well as the EFTA countries Iceland and Norway, members of the European Economic Area, and Ukraine aligned themselves with this declaration. Switzerland also aligned with the statement. The speaker stated that the European Union reiterated its deep concern addressed in 2005 at the observations of the Committee of Experts following the conclusions of the Commission of Inquiry. The report of the Committee of Experts on shortcomings in the implementation of Conventions Nos. 87 and 98 by Belarus had to be read in close conjunction with the most recent report of the Committee on Freedom of Association. During the discussion at the CFA's report in the Governing Body, the EU had delivered a statement explaining its 2005 decision to monitor and evaluate the situation in Belarus. It had been stated that if Belarus did not undertake a commitment to take the necessary measures to conform to the principles referred to in the ILO Conventions, then the temporary withdrawal of the generalized system of preferences was likely as a means of expressing their deep disappointment and disapproval of Belarus' serious and persistent non-respect for the legal obligations and standards enshrined in Conventions Nos. 87 and 98. This specific monitoring period had expired at the end of March 2006. The speaker indicated that even last minute information provided by the Government representative was not sufficient to be interpreted as the necessary commitment. In a recent letter to the European Commission, the Belarusian authorities had offered to cooperate with the Commission and the ILO on this issue. He urged the Government of Belarus to take concrete action without further delay in order to demonstrate its commitment. The European Commission had already prepared a draft regulation concerning the temporary withdrawal of access to the generalized system of preferences to be submitted for consideration and decision by the competent institutions of the EU. Meanwhile, the close monitoring of the situation in Belarus by the EU would continue. In view of the continuous and flagrant violations of ILO standards of freedom of association, the EU expected the Government of Belarus to fully implement the conclusions of the Commission of Inquiry and to give full effect in law and in practice to the points raised by the Committee of Experts. The EU expressed great concern at the suspension of trade unions by presidential ordinance, and the serious and systematic violations of the most basic principles of freedom of association which continued to be reported.

The Worker member of Brazil noted that Belarus was a country with a high level of human development. The FPB comprised more than 4 million members and had, for over a century, dedicated itself to the struggle to obtain and protect social rights. Belarus was being dictated how it should treat its proper workers, on pain of possible economic sanctions and political isolation. The ILO should instead focus its efforts to support those countries striving to eradicate social inequality.

The Government member of the Russian Federation stressed the fact that the Government of Belarus adhered to ILO principles and was committed to improving the national legislation and ensuring its application in practice. The speaker highlighted that the Government continued to express its readiness to cooperate with the ILO, as demonstrated by its acceptance of the Office mission in January 2006. As regards the implementation of the recommendations of the Commission of Inquiry, he pointed out that the Government had submitted to the Conference Committee concrete information about measures it had taken in this respect, such as the adoption of the new rules regulating the work of the NCLSI and the dialogue it had initiated with the CDTU. The amendment of trade union legislation would be a further positive step towards the implementation of the recommendations of the Commission of Inquiry. In his view, ILO technical assistance would be much more useful than criticism. He hoped that the cooperation with the ILO would result in the settlement of the outstanding issues and considered that the economic sanctions would not promote this process.

The Worker member of the Russian Federation recalled that this year marked the tenth anniversary of mass violations of trade union rights in Belarus, which started with repressive measures taken against the strikers in Minsk. Since then, the situation of trade unions in Belarus had only worsened and the ILO supervisory bodies had been examining the complaints of violation of Conventions Nos. 87 and 98 for six years already. He regretted that year after year, the conclusions and recommendations of these bodies repeated themselves, as did the replies of the Government representatives. In his view, this could only mean that no real progress had been made and that the Government of Belarus was either unable or unwilling to take measures to improve the situation. Russian trade unions followed closely the situation of application of Convention No. 87 in Belarus. During the process of establishment of a Union State between Russia and Belarus, Russian trade unions were very concerned about violation of workers' and trade union rights on the territory of the future Union. He regretted that the violations of trade union rights were now extending to other countries in the region. He therefore considered that the only way to compel the Government to fully implement the recommendations of the Commission of Inquiry and to demonstrate its respect for

the ILO was to consider the most serious measures provided for in the ILO Constitution.

The Government member of Bangladesh stated that the ILO ought to apply international labour standards so as to accommodate the different needs and conditions of each country. He observed that the Government had made tremendous strides towards implementing the Commission of Inquiry's recommendations by, inter alia, amending its legislation and establishing a national tripartite council. The Government had made significant progress towards compliance with the Convention and therefore deserved adequate time to implement the remaining recommendations.

The Worker member of Germany stated that the right to freedom of association was a fundamental human right that should be guaranteed irrespective of the state of development. Rejecting the claim that the ILO had failed to provide technical assistance to the Government of Belarus, she stated that the ILO had in fact offered to dispatch a mission in September 2005. However, the Government accepted to receive a mission in January 2006. This explained why the report by the Committee of Experts made no reference to ILO technical assistance. The Government did not show any readiness to make the necessary legislative changes. When the Committee on Freedom of Association had dealt with the situation in Belarus in March 2003, it had been extremely concerned about the findings of the Commission of Inquiry. It was very clear that law and practice were more than ever in non-compliance with Conventions Nos. 87 and 98. The Government was systematically suppressing independent trade unions. The CDTU was hindered to rent offices and trade union coordinators were prohibited to meet with their members in factories. The Government continued to promise improvements, but so far the recommendations of the Commission of Inquiry had not been implemented. The situation was even worsening and trade unionists that had spoken to the Commission of Inquiry were subject to increased persecution. Independent trade unions were still prevented from participation in tripartite structures. Only the FPB was taking part in negotiations. The obstacles put in place to prevent independent trade unions from obtaining registration were very serious. As an ILO member State bound by Convention No. 87, Belarus could not do away with the right of trade unions to exist and to freely carry out their activities.

The Government representative of China took note with interest of the fact that the Government of Belarus was ready to apply the recommendations of the Commission of Inquiry and to follow up on the observations of the Committee of Experts, and that it had drawn up a plan of action in this respect.

An observer representing the International Confederation of Free Trade Unions (ICFTU) and member of the Congress of Democratic Trade Unions of Belarus (CDTU) pointed out that in the ten years that the ILO had been monitoring the non-respect of trade union rights in Belarus, no progress had been made. On the contrary, the denial of workers' rights had only increased. By way of example, the Government had done nothing about the 12 recommendations of the ILO Commission of Inquiry. The CDTU, although it had the status of a national trade union central, had not had its rights restituted as a member of the NCLSI. Instead of following the ILO recommendations, the NCLSI had adopted, on 28 November 2005, a rule that required 50,000 members for any organization to sit on its board. This act flouted the national Constitution and the law on trade unions. The CDTU which, due to pressures exerted on it, only had 9,000 members was therefore excluded from this platform for dialogue by this cynical move. Subsequently, the signing of the new collective agreement for 2006-07 took place without the participation of the CDTU. This exclusion also applied to local organizations. It had already been announced that some of the unions affiliated to the CDTU (the Grodno-Azot Company Union and the Liess Company Union) would no longer be allowed to sit as partners in the signing of collective agreements. The Government was using the principle of representativity for its own ends, both regarding the CDTU and organizations which were affiliated to it in enterprises. The civil servants responsible for this action refused to accept that the principle of representativity, like any democratic principle, did not include the banning or elimination of the minority, but was an instrument for the defence of minority rights. A far-reaching process of exclusion of independent trade unions was under way at present. The authorities had recourse to transforming employment contracts for practically all workers in the country into fixed-term contracts, generally of a year's duration. This measure was very destructive for the workers and left them entirely at the mercy of employers and the Government. Trade unions affiliated to the CDTU were especially in the line of fire. For example, in January 2005 alone, the threat of loss of an employment contract was enough to lose 300 members out of the 800 in the union at the Grodno-Azot Company. In April-May 2006, the same procedure resulted in 80 people in the Bobrouisk tractor factory leaving the affiliated union. The victims of these procedures were numerous, as many colleagues were dismissed at the end of their short-term contract. And the list went on. All these facts, like others, had been attested to by documents put at the disposal of the ILO.

Nearly 30 trade unions close to the CDTU in the radio-electrical industry had been deprived of their registration, that is, outlawed. The REP trade union had attempted, without success, to register the private taxi drivers' union in Gomel. A whole range of organizations had been victims of illegal evictions from their facilities. According to Belorussian law, loss of facilities for a trade union meant loss of legal address and, consequently, loss of legal status. The CDTU and the trade union organization of metal workers of the Liess Company had been forcibly evicted from their offices. In recent years, the CDTU had lost its offices three times. Since the beginning of the year, attempts had been made to ban printing and distribution in the country of the CDTU newspaper "*Solidarity*". The newspaper was the only one in the country to address the issue of denial of trade union rights in Belarus and to have published the recommendations of the Commission of Inquiry. The hostility of the Government towards independent trade unions resulted in the arrest and imprisonment of numerous trade unionists. A particularly ferocious wave of repression took place in March 2005 during the presidential election campaign. Suddenly, the Government attacked dozens of activists and independent trade union members. Among those arrested were Vassily Levchenkov and Alexander Bukhvostov, leaders of the metalworkers free trade union and of the radio-electronic trade union. Valentin Lazarenko, chairperson of the CDTU Belarus at the University of Brest, had not only been placed in detention but had been dismissed in an illegal manner. In December 2005, the penal code was modified to provide for imprisonment of up to three years for "insult to the prestige of the Republic of Belarus", promising ever more arrests in the ranks of the CDTU. It was not by coincidence that the head of the Belarusian KGB, speaking on the issue in Parliament, stated that the first persons aimed at by these provisions were the independent trade union leaders who "told lies so that the ILO could decide on sanctions to be taken against Belarus". Belarusian totalitarianism, cynicism and scorn for international rules and standards which were fundamental to the ILO were a challenge to the international community. Today, there was a choice between two attitudes: resignation after so many years of arbitrary action against the free and independent trade union movement of Belarus, or forcing the dictatorship to take account of human rights and trade union freedoms.

The Government member of Egypt noted that the reports of the supervisory bodies showed that numerous ILO Members had difficulties in applying freedom of association standards and principles. The ILO should therefore redouble its efforts to assist these countries to bring their legislation in line with the Conventions Nos. 87 and 98. Noting that the Government of Belarus was making efforts to implement the recommendations of the Commission of Inquiry, the speaker called on the ILO to provide technical assistance to enable the Government to continue addressing these issues. Amending the relevant legislation was a complicated matter and would understandably take some time.

The Government member of India expressed satisfaction with the Government's demonstrated commitment to following the recommendations of the Commission of Inquiry. The Government had taken appropriate steps to make the trade union registration process more transparent. He called upon the ILO to provide the Government with the technical assistance necessary to implement all of the recommendations.

The Government member of the Bolivarian Republic of Venezuela thanked the Government for the information supplied. The Government had demonstrated a cooperative attitude with respect to realizing the principles laid down in Conventions Nos. 87 and 98. It had taken steps to amend legislation and strengthen the mechanisms for social dialogue. In light of the above, the ILO should seriously consider honouring the Government's request for technical assistance.

The Government member of Cuba noted that account should be taken of substantive issues which reflected the current situation: Belarus had ratified the eight fundamental Conventions; the Government had received the Commission of Inquiry and facilitated its work, in all freedom and without the least interference; the Government had approved the special plan of action to apply the recommendations of the Commission of Inquiry; there was a council to improve legislation in the world of work made up of trade unions, two of which were plaintiff organizations, employers' organizations, NGOs and academia. In addition, the Government had disseminated an instruction letter in which figured the national legal provisions and international labour standards in force which prohibited interference by employers and trade unions in each other's affairs. The Government had provided statistics on the number of labour inspections carried out and on the number of violations recorded. Ninety per cent of workers were affiliated to a trade union and discrimination in labour relations was prohibited by article 14 of the Belarus Labour Code and by article 4 of the Law on Trade Unions. The Government recognized that the development of efficient legal systems and the application of the law continued to be a priority for the country. In addition, it had announced changes in the national legislation in order to eliminate requirements for the setting up of a trade union in companies and to simplify the registration procedure of trade union organizations and to forbid all State interference in the creation of new trade unions. The speaker noted that all these issues constituted concrete facts that demonstrated the proof of political will to move towards the full application of standards established in these Conventions. He concluded by stressing that ILO technical cooperation should be used to assist in reaching the objectives set by the ILO.

The Government representative of Kenya welcomed the report

of the Committee of Experts and of the Commission of Inquiry as well as the reports from the various ILO missions that had taken place in the country. She expressed her satisfaction on the statement, the initiatives and the commitment of the Government of Belarus. She encouraged it to comply with Conventions Nos. 87 and 98 and welcomed the efforts of the Office. She concluded by asking for technical assistance to be provided to the Government so that next year progress could be observed.

The Government representative, in commenting upon the issue of the use of contractual forms of employment, emphasized that all alleged violations were examined either by the state labour inspectorates, in which unions played an important role, public prosecutors or courts. She could not understand what other bodies could be created in parallel to bodies that already existed, i.e. labour inspectorates, courts and offices of public prosecutors. She regretted that the information provided by the Government was not examined objectively and that in respect of some issues, the Committee on Freedom of Association and the Committee of Experts continued to repeat the same requests. For example, for a number of years, the Committee on Freedom of Association had been asking the Government to reinstate and compensate several allegedly dismissed workers. She regretted that the Committee on Freedom of Association disregarded the evidence submitted by the Government that these workers either voluntarily resigned or were dismissed for stealing. It was only following the ILO mission carried out in January 2006 that certain facts were clarified. With regard to the NCLSI, the speaker considered that in drafting the new regulations on its composition, account was taken of the previous conclusions in respect of various countries reached by the Committee on Freedom of Association. A criterion of 50,000 minimum membership for participation in a tripartite consultative body at the national level was never considered by the Committee on Freedom of Association as being too high. She further stressed that the regulations were submitted to the ILO but the Office did not provide any negative comments in this regard. Therefore, the Government concluded that these regulations were in conformity with the Conventions. She concluded by stating that she was under the impression that only the views of the opponents were heard and that the supervisory bodies failed to take into account the measures taken by the Government to implement the recommendations of the Commission of Inquiry. She hoped for a more objective analysis of the information provided by the Government in the future.

The Worker members awaited a simple response from the Government as to when did it intend to take action on the recommendations of the Commission of Inquiry and on the comments of the Committee of Experts. They noted that the Committee was unanimous on the issue that Conventions Nos. 87 and 98 allowed no flexibility as to their content, i.e. that the fundamental rights enshrined in them had to mean the same in all countries in the world. The argument that the right of workers to trade union pluralism was only to be protected in the capitalist world had been swept away by history. Trade union pluralism was not synonymous with freedom of association and representation of workers' interests could very well, as was shown in several countries, be guaranteed by a single trade union organization: The principle was absolute: a single trade union could not be imposed by the Government and workers should always have the right to set up another one if they wanted. The Worker members insisted that the complaint submitted by three trade unions in the country had not been withdrawn, as had been suggested in the debate. The Worker members were in favour of providing technical assistance to the Government on one condition: that the Government requested it with a view to realizing concrete changes in law and in practice and that this technical assistance in fact served to implement the 12 recommendations made by the Commission of Inquiry. It would be indefensible for the ILO to use its resources to other ends. In addition, the Worker members said they were willing to consider all facts presented by the Government and to address their comments to the Committee of Experts for review at a future session. The Worker members made four proposals for conclusions on this case: (1) that the conclusions should be brief and reflect the main points presented by the Government and the main points raised by the Committee of Experts; (2) that the conclusions should draw the Committee of Experts' attention to the urgency of action; (3) that the conclusions should regret the lack of real progress by the Government; (4) that the conclusions should foresee the inclusion of this case as a special paragraph in the report for continued failure to apply the Convention. The use of a special paragraph should make the Government understand that it was being offered a last chance and that if no concrete measures were taken before the next session of the Governing Body in November 2006, the Governing Body would, they hoped, take steps foreseen in the ILO Constitution. Finally, the conclusions should also express that the ILO would closely monitor the situation of independent trade unions in the country and take immediate action in the event of new abuses of their rights.

The Employer members agreed with the summary of this case made by the Worker members. The Government made, at best, very minimal efforts. No substantially new information concerning measures to ensure compliance in law and practice had been presented. A dialogue was only meaningful if the two sides shared common objectives. In order for technical assistance to be fruitful, it was necessary that the Government accepted a common understanding with the ILO that the objective of technical assistance was to address the implementation of the recommendations of the Commission of Inquiry and the matters raised by the Committee of Experts. The Government was expected to deliver concrete and tangible results. The Employer members concluded that this was a serious case of continued failure to apply the Convention, but they considered that the ILO had to look into taking other measures available under its Constitution.

The Worker members recalled that they were interested in knowing whether the Government representative could set a time frame for implementation of all the recommendations of the Commission of Inquiry.

The Government representative, referring to her initial statement, considered that it was not reasonable to talk about concrete dates. She regretted that no attention was paid to the measures the Government had already taken and to the difficulties it was facing. She explained that the process of adoption of new legislation was necessarily long.

The Committee took note of the statement made by the Government representative, the Deputy Minister of Labour, and the written information provided, as well as the discussion that took place thereafter.

The Committee recalled that it had examined this case last year, when it deplored the absence of any real concrete and tangible measures on the part of the Government to implement the recommendations of the Commission of Inquiry. While noting that the mission, which this Committee had urged the Government to accept when it discussed this case last year, had finally taken place at the beginning of the year, the Committee regretted that as a consequence of this delay, the mission report had not been available for the meeting of the Committee of Experts.

The Committee recalled the serious discrepancies between the law and practice and the provisions of the Conventions that had been raised by the Commission of Inquiry and the Committee of Experts.

The Committee noted the Government's reiteration that a special plan of action had been adopted aimed at implementing the recommendations of the Commission of Inquiry, taking into account the complex nature of these recommendations. The Committee also noted that the Government had referred to its publication of the recommendations of the Commission of Inquiry in the magazine of the Ministry of Labour, as well as to the letter it had addressed to the state administrative bodies on the development of social partnership. The Committee further noted the Government's stated intention to elaborate changes to the national legislation, taking into account national circumstances and interests, which would envisage some points raised by the Commission of Inquiry, including the procedure for registering trade unions.

The Committee, however, noted with deep concern the statements made concerning the further difficulties faced by trade union leaders and members affiliated to the Congress of Democratic Trade Unions (CDTU), including arrests and detentions and the changes to the procedures relating to the National Council on Labour and Social Issues, resulting in the loss of its seat on the Council.

The Committee deplored the continued failure by the Government to implement the recommendations of the Commission of Inquiry and shared the sense of urgency deriving from the comments of the Committee of Experts in relation to the survival of any form of independent trade union movement in Belarus. It deplored the fact that it had to note that nothing the Government had said demonstrated an understanding of the gravity of the situation investigated by the Commission of Inquiry, or the necessity of rapid action to redress the effects of these severe violations of the most basic elements of the right to organize. It called upon the Government to take concrete steps for the implementation of these recommendations so that real and tangible progress could be noted by the November session of the Governing Body. If no such progress could be noted, the Committee trusted that the Governing Body would begin to consider, at that time, whether further measures under the ILO Constitution should be considered. The ILO should make available any technical assistance the Government might request provided that such assistance was needed for the concrete implementation of the recommendations of the Commission of Inquiry and the Committee of Experts. The Committee further trusted that the situation of independent trade unions in Belarus would be closely monitored by the ILO and that appropriate action would be taken in the event of repressive measures by the Government.

The Committee requested the Government to provide a full report on all measures taken to implement the recommendations of the Commission of Inquiry for examination at the forthcoming session of the Committee of Experts.

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

The Government representative expressed the view that the conclusions should take into account the measures that were being taken by the Government to implement the recommendations of the

Commission of Inquiry and recommendations that had already been implemented, including: recommendation 7 on the use of fixed-term contracts; recommendation 11 on the access to membership of the National Council for Labour and Social Issues of all umbrella organizations representing trade unions; and recommendation 12 concerning the review of legislation respecting the industrial relations system. She stressed that the Government was not aware of any case of alleged arrest of trade union activists. However, the conclusion that the situation in Belarus had deteriorated was based on these allegations. Moreover, the conclusions claimed that the Government had done nothing to give effect to the recommendations of the Commission of Inquiry, but in so doing did not correspond to what had happened in practice.

Convention No. 95: Protection of Wages, 1949

Central African Republic (ratification: 1960). **A Government representative** welcomed the efforts made by the ILO to promote the observance of international labour standards in various African countries and recalled that his country had just recently overcome a particularly difficult situation. Having re-established constitutional order on 8 June 2005, the Central African Republic had initiated political, economic and social reforms in cooperation with the social partners in order to establish a new economic order and relaunch the economy. While the Committee of Experts' observations under Convention No. 95 concerning the non-payment of salaries of civil servants had been fully taken into account, some time was needed. The Government had taken measures with regard to wage arrears and blocked salaries in public service, such as the establishment of a tripartite technical committee in November 2005, comprised of representatives of the public authorities (Ministry of Civil Service and Ministry of Finance) and representatives of the social partners (the six trade union confederations). The task of that committee was to assess the amount of outstanding wage arrears in the civil service and to propose to the Government measures to be taken with a view to ensure social peace. The Committee was about to provide its conclusions to the Government which would enable it to take concrete action. For eight months the Government had been vigilant in ensuring that every worker in the country received his or her salary every month and would continue to do so. The Government reassured all of its partners of its commitment to find lasting solutions to the problem of wage arrears.

The Worker members noted the Government's demonstrated commitment to resolving the present problems by engaging in a permanent dialogue with the social partners. In its General Survey of 2003, the Committee of Experts recalled that the quintessence of wage protection was the assurance of a periodic payment allowing the worker to organize his everyday life with a reasonable degree of certainty and security. Following a period of conflict, such security was vitally important to the reconstruction of the nation's social and economic fabric. As always, it was essential that concrete data be supplied in order to verify the progress made. The Worker members expressed the hope that the Government, following the tripartite consultations it had referred to, would soon furnish a report that would allow for a thorough assessment of the application of the Convention.

The Employer members thanked the Government for the information provided. The Committee of Experts had dealt with the problem under discussion every year since 2000. The latest comments by the Committee of Experts only dealt with the application of the Convention in the public service. The Employer members stressed the importance of the Convention, as non-compliance had an immediate bearing on the lives of workers. In addition, with respect to the public service, the non-payment of wages constituted a threat to the public interest. The observation gave no further details on the exact extent of the problem in the public service, but the gravity of the situation was confirmed by the Government. The Employer members welcomed that the Government was committed to solving the problem, including through constituting a tripartite commission. This was a first step which should be followed up.

The Worker member of the Central African Republic, speaking on behalf of the National Confederation of Central African Workers (CNTC), the trade union Confederation of Central African Workers (CSTC), and the Union of Central African Workers (USTC), recalled that the population had suffered for years under deplorable conditions characterized by wage arrears, an absence of social dialogue, the denial of collective bargaining rights and other infringements on human and freedom of association rights. In the public sector, the wage crisis tarnished the image and dignity of civil servants. Retirees in the public and the private sectors did not receive their pensions, and the trade unions, in spite of their efforts over the years, had not managed to devise a satisfactory solution. Since 15 March 2003, the trade unions continued to actively address this problem, and negotiations with the Government gave rise to an agreement with four objectives: the regular payment of wages, the readjustment of wage levels, the settlement of accumulated wage arrears, and the creation of an autonomous pension fund. In this connection, joint committees were established to examine each of these objectives and formulate concrete proposals. The progress made with respect to this problem allowed for a cautious optimism; it was important to consolidate these gains with technical cooperation assistance from the ILO.

The Government member of Nigeria underscored the need to appreciate that the Central African Republic had endured a decade of political and military strife, with severe socio-economic consequences. The Government had expressed its commitment to ensuring the implementation of Convention No. 95 and indicated the measures taken to address this serious situation. It should therefore be granted the time it had requested to meet its obligations.

The Worker member of Senegal recalled that the Committee of Experts' observation noted an ongoing and serious infringement of the Convention. The fact that the Central African Republic had just emerged from a difficult situation did not absolve the Government of its duty to remedy this serious problem from which many workers continued to suffer. Wages were an essential aspect of human dignity; the Central African Republic households affected by this grave situation could not abide by this wait-and-see policy of the public authorities. Considering that public sector workers were owed wage arrears of over 40 months, it was vitally important that the Government took immediate action, in concert with the trade unions, to arrive at a definitive solution and thus provide the international authorities with solid guarantees of its goodwill and commitment to fulfilling international obligations.

The Worker member of Côte d'Ivoire stated that this was a typical case of a government not following up on its commitments. It was important to bear in mind that the payment of wages to the workers was a question of dignity and survival. In the Central African Republic, certain categories of workers had suffered from non-payment of wages for more than 40 months. In spite of this, they had to assume the necessities of existence. This situation had ravaging effects for the whole of society, such as aggravation of precarity, degradation of the sanitary situation, and an increase of social tensions. As the situation in developing countries was very difficult in general, it was imperative that the Government of the Central African Republic made all possible efforts to increase the pace of its action in order to give hope to the population.

The Government representative reassured the Committee of the goodwill of his Government, which was demonstrated by the fact that for eight months it had been vigilant in punctually paying every worker his or her salary. As regards the public sector, he reiterated that a tripartite committee had been set up to propose sustainable solutions to solve the problem. A process had thus been initiated and the Government was acting as fast as possible. However, one had also to understand that it was not possible to rehabilitate an economy that had been suffering from ten years of political and military strife overnight.

The Worker members considered that the indications given by the Government did not call into question the statements made earlier by several Worker members. The information given by the Government provided a fairly satisfactory answer to the short and concrete questions they had put to the Government.

The Employer members agreed with the Worker members that the information provided by the Government was, for the time being, satisfactory. They nevertheless considered that the indications given should be confirmed in the Government's next report to the Committee of Experts.

The Committee noted the oral explanations given from the Government representative and took note of the ensuing discussion. It noted, in particular, the information concerning the serious political and economic difficulties encountered by the Government until the re-establishment of the rule of law in June 2005. It also noted the measures envisaged in order to solve the issue of wage arrears in the public sector. According to the Government, a joint technical committee was set up in November 2005 with a view to evaluating the volume of wage arrears and formulating proposals, and was now in the process of concluding its work.

The Committee was mindful of the political and military crises experienced by the country in the past ten years which had gravely affected the national economy and had given rise, amongst other things, to major difficulties with respect to the regular payment of wages in the public and the semi-public sector. It reminded, however, the Government that the delayed payment of wages or the accumulation of wage debts clearly contravened the letter and the spirit of the Convention and rendered the application of most of its other provisions meaningless. Problems of that nature called for sustained efforts, open and continuous dialogue with the social partners, and a wide range of measures, not only at the legislative level but also in practice, in order to ensure an effective supervision through labour inspection.

The Committee reiterated that the payment of wages in full and on time was an important workers' right and an absolute prerequisite for healthy employment relations, economic progress and social welfare.

The Committee emphasized the importance that it attached to a Convention that related to the welfare of the workers and their families in the most tangible and elementary manner and encouraged the Government to continue dealing with the persisting wage crisis. It also requested the Government to closely monitor the evolution of the situation and make every effort to collect and communicate to the Committee of Experts for examination at its

next session up-to-date information on the volume of accumulated wage arrears and any new measures taken to resolve the situation.

Libyan Arab Jamahiriya (ratification: 1962). **A Government representative** emphasized that his country had always respected ILO principles and instruments, and many of these were reflected in the Green Book and Law No. 20 of 1991 respecting the promotion of liberty, which provided the basis for employment relationships. The Law also guaranteed social protection, which was a right for everyone in Libyan society. The speaker also paid tribute to the ILO and its supervisory bodies. However, he regretted that the comments of the Committee of Experts contained some errors and imprecise information on the situation of illegal workers and that they overlooked the measures that had been taken by his country to consolidate labour protection and reduce poverty. In the detailed report provided to the Committee of Experts, his Government had presented information on a street quarrel which had occurred between certain Libyan nationals and persons from other African countries, and which was unrelated to a labour conflict at the workplace. The security services had carried out an investigation and the judicial system had given its verdict on the persons convicted in this incident. The ILO had received copies of the court orders issued in this regard. Those who were expelled as a result of this incident had been illegal immigrants. No persons who had entered the country lawfully and who were in possession of a labour permit had been expelled. The expulsions had been carried out in coordination with the respective embassies and no claims had been received for wages due, as alleged by the ICFTU. No related complaints had been made by any individual workers or a trade union organization to the General People's Committee for Workforce, Training and Employment, to the General Producers' Union, or to the Democratic Organization of African Workers' Trade Union, even though his Government was fully prepared to settle any legally documented claims submitted by any person from any country.

The speaker indicated that his country had established the necessary policies to regulate the entry, departure and employment of African citizens, in a manner which ensured their basic rights at work, dignity and employment in decent jobs. It had also ensured the rights of foreign nationals through its legislation in relation to work and social security, in accordance with international labour standards. The measures adopted included receiving experts from the ILO's International Labour Standards Department in July 2005, joining the International Organization for Migration (IOM) and opening an IOM office in Tripoli, in accordance with the recommendations of several international meetings. The measures adopted by his Government had been reviewed so as to reply to comments made by the ICFTU. An invitation had been extended to ICFTU representatives to visit his country so as to examine the measures adopted for the protection of fundamental rights at work. The Local People's Congresses had adopted in February 2006 the El-Gadaffi Project for Youth, Women and African Children to promote the fundamental principles of work, reduce poverty in Africa and identify the funds needed for investment in the development of human resources in Africa, in a manner which was in accordance with the objectives of the ILO and the Ouagadougou Declaration of 2004. An ambitious plan had also been developed with workers' and employers' organizations to review labour legislation, create employment opportunities, and undertake training of human resources.

The speaker maintained that some of the comments of the Committee of Experts might have resulted from a lack of understanding of the Government's position, or from a difference in the interpretation of the legal provisions of the instruments. One example was the Committee of Experts' recommendation to conclude a bilateral social security agreement with a specific country, similar to the bilateral agreements that had been concluded with other countries. This recommendation could be seen as a challenge to Libyan sovereignty. With a view to improving legislation on labour, public service and social security, he pointed out that draft legislation was currently under examination by the Local People's Congresses, which were competent in the matter and tripartite in nature. He added that the wages of workers employed in warehouses and in the agricultural sector were covered by Law No. 58 of 1970. In conclusion, he reaffirmed the importance of adopting a suitable approach to encourage member States to ratify international Conventions and to follow the recommendations of the supervisory bodies. He confirmed his country's willingness to provide all the required information to the Conference Committee and to supply detailed information in its next report to the Committee of Experts. He also welcomed the technical assistance of the Office to facilitate the full application of ILO Conventions ratified by his country.

The Employer members noted that the Committee of Experts had dealt with the case eight times within the last ten years and the Conference Committee had last dealt with it in 1996. The case was also cited in the General Survey of 2003. The allegations essentially concerned a violation of Article 12, paragraph 2, of the Convention. The final settlement of all wages due upon the termination of a contract of employment had in the past not been granted to Palestinian migrant workers who were expelled from the country. The problem had now extended to migrant workers from neighbouring countries. In the past, the Government had often stated that the problem did not exist among migrant workers who were staying legally in the Libyan Arab Jamahiriya and had a work permit. The Committee of Experts, however, did not have to deal with the question as to whether the expulsion of migrant workers was legal or whether a valid work permit was required. Convention No. 95 and its Article 12, paragraph 2, did not relate to the status of the worker or the existence of a work permit. Convention No. 95 intended to ensure that everybody who had worked for a certain employer had the right to wages and that this right needed to be defended. Thus, the Government was required to ensure, that after the termination of work relationships of migrant workers, they were in a position to enforce their wage claims. For over 25 years the Committee of Experts had also been criticizing that Articles 2, 4, 7 and 8 of the Convention were inadequately implemented. The Government did not deny the problem and announced a wide-ranging examination of the impact of new provisions of the Labour Code, involving the social partners. This examination should be carried out as soon as possible and statistical data concerning the application of Article 12 in law and practice should be provided.

The Worker members recalled that the Conference Committee had discussed in 1996 the question of wage protection in the Libyan Arab Jahamiriya. In its report, the Committee of Experts observed that, in spite of the changes that had taken place in the country, the Government had confined itself to general statements and had not given concrete answers as to the number of foreign workers having left the country, in most cases forcibly, without having been paid. Moreover, the Committee of Experts had been commenting for more than 25 years on the situation of workers that did not enjoy any legal protection concerning the payment of their wages. The Committee of Experts had also commented on the fact that up to 50 per cent of the wages could be paid in kind; the need to regulate works stores to ensure that goods and services were offered at fair and reasonable prices; the need to set overall limits for wage deductions of workers so that they could support themselves and their families. Bearing in mind all these facts, the Committee of Experts had highlighted this case with a footnote. The Workers recalled that in the case concerning the application of Convention No. 118 by the Libyan Arab Jamahiriya, the Committee had decided to place its conclusions in a special paragraph as a result of the Government's attitude of indifference. It appeared that as a result of this and also following a mission by the Office, the situation had improved. The conclusions on this particular case should be sufficiently strong to encourage the Government to change its attitude and remedy the problems on the application of Convention No. 95, which the supervisory bodies had been addressing for more than a quarter of a century.

The Worker member of the Libyan Arab Jamahiriya, speaking on behalf of the General Producers' Union, stated that his organization had not received any formal complaints or appeal from any federation or trade union organization in relation to the observation made by the Committee of Experts on Convention No. 95. He pointed out that the majority of migrant workers were in fact in transit through the Libyan Arab Jamahiriya on their way to other countries in the north of the Mediterranean and had no legal status. The speaker stated that the General Producers' Union was in continuous contact with the General People's Committee for Workforce, Training and Employment and other authorities responsible for labour law enforcement to resolve any related problems. The General Producers' Union was also a member in the joint Committee composed of the social partners and other related administrative departments, whose task was to examine the observations made by the Committee of Experts. He expressed his organization's full willingness to collaborate with the ILO and related institutions to ensure the application of international labour standards through social dialogue with all partners. The speaker recalled the role played by the General Producers' Union in the resolution of previous problems relating to the settlement of wages of workers from neighbouring countries, whose services were no longer needed. All those workers had obtained their dues, in coordination with their trade union organizations, under the supervision of the Democratic Organization of African Workers' Trade Union and the ILO in 1985. This was proof of the full cooperation of the Libyan Arab Jamahiriya with its social partners and the ILO. He had expected the thanks of the Conference Committee for such collaboration and the continued response shown by his country, rather than being the subject of unfounded allegations. His country endeavoured to resolve the migration problem and to take initiatives aimed at providing decent work to all migrant workers in their countries of origin so that they could avoid emigration. He also stated that his organization was also following up closely on the determination of the minimum wage with the Government. In conclusion, he stressed that the General Producers' Union was an independent body that maintained good relations with all regional and international trade union organizations. He called up on the Conference Committee to support the efforts being made by his country to address the issues raised by the Committee of Experts.

The Worker member of Senegal regretted that in view of the trauma suffered by the workers expulsed from the Libyan Arab Jahamiriya without payment of their wages, the Government continued to hide behind a wall of silence and refused to apply the Convention. The tragic events had divided Libyan and migrant workers from Chad, Ghana, Guinea, Niger and Nigeria working in the petroleum industry. However, these circumstances should not mask

that necessary measures had not been taken to integrate Convention No. 95 into the legal framework in order to solve this painful issue. Despite 25 years of comments, the legislation seemed immutable. Moreover, independent trade unions were prohibited and workers could only become members of a federation that was controlled by the Government and administrated by the People's committees. Foreign workers, important in number, were unable to create or become members of a trade union. The list of the Government's commitments that had remained unfulfilled was long. It should adopt an action plan, including the reimbursement of sums owed to the deported workers. The current situation in the country was such that migrant workers did not profit from any protection against discrimination to which they were regularly subjected.

The Government member of Morocco, referring to the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, stressed the importance of the protection of migrant workers' wages for the international community. He predicted that migration flows would increase as a result of the economic and social changes brought about by globalization and emphasized the need for the international community to mobilize all forces for the purpose of ensuring humane and decent treatment for migrant workers. It could be inferred from the Government's response that the problem did not concern migrant workers legally residing in the country but rather illegal workers, many of whom caused trouble in the country. The repatriation of these illegal workers had always been carried out in coordination with the authorities of their respective country of origin. The speaker favoured a solution based on dialogue between the workers and the Government on how best to protect the rights of these workers and guarantee the payment of owed wages. He supported the Government's initiative to introduce a new Labour Code and welcomed the Libyan Arab Jamahiriya's readiness to amend national legislation with a view to tackling the issue at hand and keeping with international labour standards.

The Government member of Egypt recalled that the issue of migrant labour was being debated by the international community, especially in view of the harmful social consequences of globalization. She thanked to the Government representative for his statement, in which he had reiterated his country's willingness to meet the entitlements of anyone who submitted the necessary legal documents to substantiate his claim. She noted that the Government had adopted the necessary policies to guarantee the entry, departure and employment of African citizens in a manner that fulfilled their fundamental rights at work and provided them with decent jobs. She expressed her confidence that the Libyan Arab Jamahiriya would fulfil its commitments by formulating legislation to address the situation of illegal workers and by concluding agreements with labour-supplying countries so as to develop the necessary procedures for legal migration. Finally, she welcomed the efforts made by the Government to provide decent work for all migrant workers.

The Worker member of Guinea indicated that the Libyan dream had done much damage to Africa, in particular to the workers of Guinea. The economic and social crisis, which was seriously affecting the workers of the continent, had incited them including some youths, to migrate to the Libyan Arab Jamahiriya, attracted by very high wages and better working conditions. It was difficult to resist wages ranging between US$10,000 and US$20,000, when the average annual wage in Guinea was about US$600 and the infrastructure, such as water, electricity and hospitals, was not sufficiently developed, or even completely lacking.

She referred to four examples of Guinean workers who had left the country to work in the Libyan Arab Jamahiriya. Mr. Abdourahmane Balde, from Koloma, a young man of 30 years of age, still unemployed six years after having finished the university and who was engaged to a young woman, had left Guinea for Libyan Arab Jamahiriya where he had worked for two years before being deported without having received his wages. Having returned to Guinea, he was unable to honour his engagement, a degrading attitude from a cultural point of view in Africa. Moreover, in order to pay his debts, his mother had to sell her cattle, the only possessions she had. Since then, he had pressed the Ministries of Justice and Foreign Affairs seeking justice. Another example was Mr. El Hadj Diouldé Barry, a merchant, married and father of eight children, resident in Mamou, who had left Guinea for the Libyan Arab Jamahiriya. After more than four years working there, he had also been deported without his wages. After he returned to Guinea, he had lost his social status. A further example, Mr. Mamoudou Toure, a teacher and public servant for over 15 years, had sold his house, car and mortgaged his spouse's dowry and had left, against the advice of his spouse, to go to the Libyan Arab Jamahiriya, in the certainty of making fortune. After four years of work, he had also been expelled without payment. Furthermore, Mr. Kerfalla Bangoura came back to Guinea without money, sick and indebted after four years of ill-treatment.

The violation of the provisions of Convention No. 95 by the Libyan Arab Jamahiriya had destroyed families who had only wished to work and be paid so that they could come back to their country and meet their primary needs, such as eating, living, having medical treatment, bringing up their children and building a family. In addition to these material hardships, these workers had been humiliated. She concluded by calling on the Government to provide the Committee of Experts with information on the measures taken to apply the Convention.

The Government member of Sudan expressed appreciation of the positive and clear statement made by the Government representative, in which he indicated his country's willingness to fully respect the rights of any person from any country. He therefore expected that the Government would, in the very near future, take concrete and practical measures so that all the persons concerned could obtain their rights. The position of the Libyan Arab Jamahiriya demonstrated its willingness to collaborate with the ILO and the social partners in order to resolve pending issues to the satisfaction of all the parties concerned, thereby fulfilling all of its obligations under ILO Conventions. He concluded that this positive attitude should be supported and encouraged by the ILO.

The Government representative expressed thanks to all the speakers for their observations, whether they were positive or critical, provided that they were based on correct information. However, he stated that he would not comment on certain allegations made, as they were legally unfounded. He indicated that it would be useful to comment on the points raised by some speakers. With respect to Palestinian workers in the Libyan Arab Jamahiriya, he called on those making the allegations to provide one concrete example to demonstrate the truth of the allegations made. He indicated that Palestinian workers enjoyed the same rights as Libyan citizens in relation to education, health, freedom of assembly and the freedom to take decisions within the people's committees. Every worker had the right to a wage in accordance with Libyan laws, which specified that no work would be authorized without remuneration and which prohibited discrimination. He emphasized that Libyan laws went beyond the provisions contained in Convention No. 95 and that they did not authorize discrimination based on work or gender. He questioned the need for further statistical information, but added that his country would be ready to provide statistics on workers convicted for fighting in the streets. As for workers who had been repatriated, and who had not been involved in the street fights, he stated that this had been done at their request and that his country had paid the cost of their repatriation, after consultations with the employers involved. He indicated that he had documents to substantiate his statement, adding that the Libyan Arab Jamahiriya was regarded as a paradise for workers from certain neighbouring countries. However, he added that illegal migrants who were apprehended at sea, and who were using his country as a stage to reach other countries, such as France or Malta, were repatriated as they were using his country as a mere stopping place on the way to another destination. He therefore called on speakers to be precise in the information that they provided. His country was fully prepared to take positive measures and meet its obligations arising out of Convention No. 95. He expressed pride in his country's legislation, which at times went beyond the provisions of the Convention, as discrimination between domestic work and other types of work was prohibited. He stated that the Libyan Labour Code, adopted in 1970, which had been formulated with ILO assistance, covered the points raised during the discussion. He was ready to provide translated copies of it upon request. He affirmed that there was no discrimination in his country between agricultural workers and workers employed in warehouses, and that everyone was treated in a respectful manner.

Regarding the comment made in relation to the recent amendment of the Libyan Labour Code, he explained the process of amendment, during which the proposed changes were discussed by the social partners and by all citizens in the local people's committees and the General People's Congress. He added that the amendment of the law on industrial relations was all the more important at the present time in view of new trends, such as globalization, developments in labour relations and telecommunications, as well as his country's application to join the WTO. He recalled that the new Code had been submitted and discussed by the local people's committees in 2002 and again in 2005. He hoped that the new version of the Labour Code could be finalized with the ILO and would be a model for all countries. He denied any accusation that his country acted in a manner contrary to the law and stated that the allegations related to individuals who had infiltrated into his country from the sea. Any problems that had occurred with the countries concerned had been settled many years ago. Referring to the incident in question, he said that he did not wish to comment on the killings. He explained that, as a Bedouin society, his country could not accept acts of aggression against the property and lives of its people. In view of the situation, protection had been provided to the foreign nationals concerned. He thanked all the speakers for their comments, although he rejected any unfounded allegations. He recalled that wages in his country were very good in comparison to those paid in many neighbouring countries. Finally, he expressed interest in requesting ILO technical assistance on the matters under discussion.

The Employer members called on the Government to provide more information on the application of Articles 2, 4, 7, 8 and 12 of the Convention so that the Committee of Experts could have a clear understanding of the situation and conduct a complete examination. The Government had indicated that it was willing to supply this information, which was a positive sign. They said that the most important issue was the application in practice of Article 12 of the Convention in

view of the need to guarantee the payment of wages that were due upon the termination of the employment relationship of migrant workers. Such debts had to be settled in the country in which the services had been provided and where the wages were to be paid. They noted that the Government had indicated that it needed ILO technical assistance to improve the situation. The Employer members trusted that such assistance would make it possible to identity the workers concerned by the wage arrears and that a solution could be found for their payment.

The Worker members supported the statements made by the Employer members and expressed their dissatisfaction with the information supplied by the Government representative in reply to the observations of the Committee of Experts, particularly in relation to the absence of statistics, which did not facilitate the examination of the case. In order to resolve the problems in the application of the Convention as rapidly as possible, it was important for the Government to cooperate with the ILO and request its technical assistance. Finally, the Worker members urged the Government to supply to the Committee of Experts information on the progress made as well as on the amendments made to the legislation.

The Committee took note of the information provided by the Government representative and the ensuing discussion. The Committee observed that this case related, first, to the alleged deportation over the past ten years of large numbers of foreign workers, mainly sub-Saharan migrant workers, without receiving payment for their entitlements and, secondly, to the implementation, in law and practice, of certain provisions of the Convention on which the Committee of Experts had been commenting for a number of years.

The Committee recalled that the Convention applied to all persons to whom wages were paid or payable, irrespective of the existence of a valid employment permit or formal contract. It also recalled that, under Article 12 of the Convention, settling swiftly and in full all outstanding payments upon the termination of a contract of employment was as important as the regular payment of wages during the employment relationship. Accordingly, the Government was responsible for establishing whether any amounts were due to the workers concerned and ensuring that any existing wage debts were fully paid, regardless of the reasons that had prompted the deportation of foreign workers considered to be illegal immigrants,

Referring to its conclusions at the 1996 discussion of the same case, the Committee hoped that the Government would take all necessary action to ensure that adequate protection was afforded to workers, whether nationals or foreign, with or without valid work permits, in respect of the payment of wages for work already performed. It also hoped that steps would be taken without further delay to give full effect to Article 2 (coverage of agricultural workers), Article 4 (conditions for payment of wages in kind), Article 7 (regulation of works stores), and Article 8 (limits to permissible wage deductions) of the Convention. Finally, the Committee welcomed the Government's request for technical assistance from the Office with a view to bringing its labour legislation into full conformity with the requirements of the Convention.

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

Bangladesh (ratification: 1972). **A Government representative** stated that the fundamental rights of freedom of association of workers were guaranteed under the Constitution, national laws and regulations, and that these were in conformity with his country's international obligations. Any aggrieved party could have recourse to the judicial system. With respect to trade union rights and the export processing zones (EPZs), he stated that EPZs were designed to attract foreign direct investment needed for rapid economic growth and increase in employment. After considerable initial successes, it was felt that the relationship between the workers and employers in this area had to be brought into conformity with the general laws, and the EPZ Workers' Association and Industrial Relations Act of 2004 fulfilled this need. The requirement that 30 per cent of the workers had to express a desire to form a workers' association and that, in the ensuing referendum, there should be a participation of at least 50 per cent and over 50 per cent of the voters should be in favour of establishing the association, were procedural issues which also provided guidance in the formation of the association for the first time in an industrial unit. He understood that the Committee of Experts had not raised any questions on the rest of the procedures provided for in the Act and added that the Act was balanced since the same percentages would apply, mutatis mutandis, if the association were to be deregistered. He further stated that as of 1 November 2006, full association rights would be available in the EPZs and that the statistical information requested by the Committee of Experts would become available. With respect to the comments by the Committee of Experts that there was a lack of legislative protection against acts of interference, the speaker agreed that there should not be any interference and that measures had to be taken if any interference was found in practice. With respect to which action constituted "interference", this was clearly spelled out in section 41 of Chapter IV of the EPZ Act.

With respect to collective bargaining and the requirement that the registration of a trade union needed 30 per cent support of the workers in the establishment, the speaker was of the view that that this did not contravene the provisions of Convention No. 98. He clarified that the objective of this requirement was to ensure broader representation of the workers in a union and to avoid mushrooming of trade unions, thereby helping to maintain unity of the workers in the establishment. The provisions in the EPZ Act were exactly in line with the provisions applicable to the rest of the country, to which neither workers nor employers had opposed. When the Committee of Experts raised the issue of 30 per cent, the basic question was whether this actually hampered the ability of the workers in the exercise of their rights. There had been so few instances of this nature that there had not been any demand for change. With respect to the Committee of Experts' comments on the practice of determining wage rates and other employment conditions in the public sector, the speaker indicated that he was not quite clear about the comments. He referred to the procedure of tripartite wage commissions with the government playing a key balancing role. From the Committee of Experts' comments, it appeared that the suggestion was to do away with the wage commissions and to let market forces work in an unfettered manner. He asked if this was the true implication of the comments. Given the imperfections in the market, and the asymmetry of information, the weaker group (i.e. the workers) might lose. With respect to the draft Labour Code, he indicated that the process was taking much longer than expected and that he was not in a position to predict the outcome of the discussions. All groups in the country had the draft and were commenting on it to ensure that the Code, once approved, had the full endorsement of all stakeholders.

The Worker members stated that the problems of application identified by the Committee of Experts were of different natures. First of all, regarding restrictions of freedom of association in export processing zones, the Government should eliminate required percentages and imposed procedures that made the establishment of trade unions difficult. At the same time, measures should be taken with respect to the lack of legal protection from interference, including adequate penalties; the required percentage related to collective bargaining should be lowered; the practice of determining wages and other employment conditions in the public sector through tripartite wage commissions appointed by the Government should be modified; and the drafting of the new Labour Code should be finalized. The Committee of Experts had most probably highlighted this case with a footnote because all of the comments, with a few exceptions, had been the same for the last ten years. This case concerned a continued failure to apply the Convention. However, Bangladesh was also on this list of individual cases due to recent serious developments that unfortunately illustrated the results of inadequate collective negotiations – that is to say social chaos, the death of several victims and scores injured, as well as important material damages. The facts spoke for themselves and should prompt the Government to radically and rapidly change its course.

The Employer members had expected more from the Government's statement than what they had received today. They recalled that the phenomenon of acts of interference in freedom of association went beyond the issue of EPZs. The Committee had been discussing matters related to the 1969 Industrial Relations Ordinance since 1987. Nothing regarding this law was heard from the Government today. Referring to the question of the determination of wage rates and conditions of work in the public sector, the Employer members emphasized that in its report the Committee of Experts had required the Government to enable the development of a voluntary collective bargaining system rather than imposing a pre-determined system. In their opinion, the heart of the matter was whether the Government would implement Article 4 of Convention No. 98. With regard to the draft Labour Code to which the Government representative repeatedly referred, the Employer members acknowledged its importance, given that in theory it could resolve all outstanding matters, but regretted not having received concrete and substantive information. Without intending to minimize the importance of the issues rooted in the 30 and 50 per cent voting requirements, they noted that Convention No. 98 did not define in concrete terms the level of trade union membership required for establishment. This notwithstanding, the Government had to revise its legal requirements to ensure the effective recognition of the right to collective bargaining. In concluding, the Employer members indicated that they wanted the Government to provide a more complete picture of the labour reform under way in Bangladesh, especially given the long history of the issues at hand.

The Government member of Malaysia thanked the Government representative for the information he provided and urged the Committee to take into account what he considered to be a demonstrated commitment by the Government to preserve and protect labour rights. He trusted that the Government had assumed its responsibility in reforming the labour legislation in line with the observations of the Committee of Experts and invited the latter to assist the Government in its efforts, in particular in its effort to promote social dialogue.

The Government member of China urged the Committee to appreciate the efforts made by the Government of Bangladesh to

implement policies and programmes for the protection of labour rights and the welfare of the people. In his view, the Government fully respected international labour standards and was committed to their gradual implementation. The speaker also endorsed the practice followed by the Government of Bangladesh as regarded the application of ILO principles on the right to organize and bargain collectively in EPZs and invited the Governing Body to recognize the progress made. In closing, he expressed the hope that the Committee of Experts would make greater efforts to cooperate with the Government and allow for greater latitude in the design and implementation of its social policy.

The Government member of Sri Lanka welcomed the efforts made by the Government of Bangladesh to work closely with the ILO for the preservation and protection of labour rights. He expressed his confidence in the Government's commitment to honour its obligations under ILO Conventions and noted that Bangladesh was in the final stages of the adoption of its new Labour Code. He reiterated the request of the Non-Aligned Movement countries regarding the working methods of the Conference Committee to the effect that the selection of the individual cases should be made in a fully transparent and predictable manner according to the criterion of balanced geographical distribution.

The Government member of Uzbekistan stated that Bangladesh had made continued efforts to apply ILO standards. A legal basis had been created to defend freedom of association and to introduce collective bargaining. With respect to workers' rights in EPZs, which had been created to attract foreign investment and employing more than 150,000 workers, the Government had given priority to the respect of a fair wage structure and the preservation of workers' interests. Finally, the country had made certain progress in the application of the Convention which deserved to be supported, as did the continuous dialogue between the ILO, the social partners and the Government of Bangladesh in the search for a mutually acceptable solution.

The Government member of Myanmar also expressed his support for the policies and programmes of Bangladesh that protected and promoted labour rights and the welfare of the workforce. In his view, the Industrial Relations Ordinance of 1969 did not contravene the provisions of Convention No. 98, but rather offered workers and employers sufficient protection regarding their right to organise and bargain collectively. He trusted that through the gradual implementation of ILO standards the Government would attain the desired objectives and urged it to continue its cooperation with the International Labour Office.

The Government member of Belarus thanked the Government representative for providing concrete information. Notwithstanding the particularities of EPZs, Bangladesh ensured through its legislation the rights of workers in these zones and implemented policies promoting socio-economic development. The country was currently in the process of drafting a new Labour Code, in the preparation of which the Government was prepared to take into account a number of constructive recommendations by the Committee of Experts, an undertaking in which the social partners should also participate. Given the volume and complexity of this work, the Government should not be pressured to finish in haste or to set strict deadlines for the adoption of the Code. The speaker also stated that his Government fully supported the position of Bangladesh on the question of minimum trade union membership, which favoured the formation of strong and independent trade unions and promoted dialogue between government and workers. He added that this issue had not been studied sufficiently in depth and that the Office should conduct, for the benefit of member States, a comparative study on the relation between trade union membership and trade union effectiveness in terms of the results achieved. The Government of Belarus requested this proposal to be duly reflected in the conclusions of the specific case as well as in the Committee's General Report. In concluding, the speaker declared his Government's commitment to social dialogue and to achieving progress through cooperation. It was necessary to re-examine the Committee of Experts' recommendations, taking fully into account the information provided by the Government representative.

The Government member of Pakistan welcomed the statement delivered by the Government representative and urged the Committee to give due consideration in its conclusions to the steps taken in order to implement the Convention. Bangladesh had taken commendable steps over the years to overcome the immense economic and social challenges it faced. As a result of these efforts, Bangladesh had turned into a major textile exporter providing jobs to thousands of workers, the majority of whom were women. In closing, the speaker expressed the hope that Bangladesh would soon be able to discharge its legal obligations with regard to collective bargaining as envisaged in Convention No. 98.

The Government member of the Islamic Republic of Iran stated that his delegation had noted the success story of the EPZs in Bangladesh, and how these zones had contributed to the economic development and employment generation in a country that had been adversely affected by globalization. He hoped that the Committee would recognize that developing countries needed some policy space in the early stages of development. He also hoped that the ILO would provide technical assistance for the settlement of the issues at hand.

An observer representing the International Textile, Garment and Leather Workers' Federation (ITGLWF), speaking with the authorization of the Officers of the Committee, stated that he had just flown in from Bangladesh and that the textile sector there had been in chaos for the past two weeks. Hundreds of thousands of workers were in revolt against wage levels fixed back in 1994, arbitrarily fixed piecework rates, and working hours which ranged from 14 to 16 hours a day. A number of workers had been killed, hundreds injured, and many arrested, and over 250 factories had been attacked, of which some were totally destroyed. Over 70,000 workers in EPZs were locked out. This situation was the result of the inability of workers to exercise their right to freedom of association and collective bargaining. There was no collective bargaining in the 4,600 factories in the garment sector, and only a handful of recognized trade unions. The 30 per cent threshold required to form a trade union effectively prevented trade unions from getting off the ground, and when they did they were promptly attacked. The ready-made garment industry was effectively a trade-union free zone. There was also widespread interference in trade unions. Companies often nominated worker representatives in workers' committees in factories. The worker representative on the wage commission established to deal with the current crisis had also been nominated by employers, but this nomination had been withdrawn in the face of uproar.

The speaker stated that prior to 1994, workers could form trade unions, albeit with no legal protection. With the enactment of the EPZ Workers Association and Industrial Relations Act, 2004, trade unions were now forbidden in EPZs and had been replaced by workers' welfare committees, which were forbidden to have contacts with trade unions or raise workers' issues. As of 1 November 2006, workers' associations would be allowed, but they would still be forbidden to have links to trade unions. The recent events should serve as a wake up call to the Government. The speaker was of the view that it would be difficult to change overnight from a climate hostile to trade unions to one characterized by mature industrial relations. For this reason, ILO assistance was urgently needed. He called on the Government to take responsibility for labour matters in the EPZs, to adopt and implement a new Labour Code providing for full protection of freedom of association and the right to bargain collectively, to abolish separate legislation concerning EPZs, and to strengthen labour law and its enforcement.

The Government representative stated that he would transmit to his authorities the comments of the Worker and Employer members. Regarding the Employer members' comment that there were no trade union rights in Bangladesh, he pointed out that the 2004 EPZ Workers Association and Industrial Relations Act provided for freedom of association in EPZs. With regard to the new Labour Code, he indicated that the draft had been submitted by the National Labour Law Commission to the Tripartite Review Committee with a view to updating it with comments from all stakeholders. He expected to receive a final draft shortly. In response to the concerns raised by the representative of the ITGLWF, he assured that the situation in his country had considerably calmed down. Regarding low wages and other conditions of employment in the public sector, the speaker maintained that these were based on recommendations of the tripartite Industrial Workers' Wages Commission. Finally, with respect to the question of voluntary bargaining in the public and private sector, his Government was of the view that the current legislation was designed to provide a fair and equitable wage structure for the public sector and to safeguard workers in less viable industries. Wages were determined by a tripartite wage commission. Furthermore, as a result of the Government's privatization process, wages in the sector were being increasingly set through free and voluntary collective bargaining. In conclusion, he stressed his Government's commitment to uphold workers' rights and constructively cooperate with the Committee.

The Employer members stated that the words "making efforts" and "progress" usually referred to something tangible. Yet, in the present discussion "efforts" and "progress" were empty words. During the Cold War, a chorus of governments had made statements similar to those of today. Today, the chorus claimed that Bangladesh was making efforts or that there had been progress. Yet, there was clearly none, especially in comparison to the cases before this Committee where efforts and progress usually referred to something concrete. If the empty criteria of efforts and progress used by the chorus of governments in support of Bangladesh were to be applied to other cases, no government would ever be considered out of compliance with ILO standards. The Employer members stressed that the process before the present Committee had to be a meaningful one. It was unacceptable to simply assert that there was progress; this had to be demonstrated. The case dealt with serious violations of a fundamental Convention and the conclusions of the Committee should reflect this reality.

The Worker members concurred with the Employer members with respect to the great seriousness of the case. The lack of adequate mechanisms for collective bargaining had led the country into a dead-end and the lack of political will was the root cause of the explosive social situation. And yet, the Government representative assured that he was unaware of any criticism voiced by workers in the export processing zones. Those who believed in the miracle of these zones, without unions and bargaining, would come to understand that this was but a mirage about to evaporate. Faced with this urgency, the ILO should take action, together with the social partners and the Government, to find a lasting solution permitting a way out of the impasse and to

respond correctly to the observations of the Committee of Experts. The Worker members asked that this case be placed in a special paragraph of the Committee's report due to the continued failure to apply the Convention and the worrying current situation.

The Committee noted the information provided by the Government representative and the debate that followed.

The Committee observed that the pending issues referred to: restrictions to the right to organize and bargain collectively in export processing zones; the absence of legal protection against acts of interference in organizations; excessive representativity requirements provided for in the law regarding the exercise of the right to bargain collectively; and the determination of wage rates and other employment conditions in the public sector by tripartite pay committees appointed by the Government, rather than letting the parties concerned bargain freely on these issues.

The Committee noted the Government's explanations in respect of the Export Processing Zones Act and its statement that the process of framing the draft Labour Code was taking longer than expected.

The Committee expressed its deep concern that the Government was not in a position to provide information on concrete steps or progress made in respect of the matters raised by the Committee of Experts. It underlined the necessity of settling without delay the persistent problems raised concerning the application of the Convention, and the importance of providing appropriate protection against acts of interference and of guaranteeing the exercise of free and voluntary collective bargaining in the public and private sectors, without legal impediments. The Committee emphasized in particular the serious difficulties that prevailed as regarded the exercise of workers' rights in export processing zones, and urged the Government to take measures to eliminate the remaining obstacles in law and in practice. The Committee trusted that the necessary measures would be taken in the very near future in full consultation with the social partners concerned and that the authorities would soon adopt a Labour Code that guaranteed the full application of the Convention in law and in practice. The Committee urged the Government to make all efforts in this regard and requested it to provide the Committee of Experts with a complete report on all the measures taken in this respect and its observations on the statements concerning severe social unrest raised in the Committee. It urged the Government to request the technical assistance of the Office in order to resolve these grave problems and to put in place durable solutions.

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

The Government representative regretted that the conclusions adopted by the Committee did not adequately reflect the responses and replies given by his Government and, as such, did not take due account of the elements covered by the discussion of the case.

The Chairperson indicated that the form of the conclusions and the procedure followed were in accordance with the usual practice of the Committee, as explained during the information session organized by the secretariat the previous week. The debate on the conclusions to the case had been closed and any further questions could only be raised when the Committee's report was considered in plenary.

Costa Rica (ratification: 1960). **A Government representative** expressed formal concern at the procedure that had been followed in deciding to include his country on the list of cases to be examined by the Committee. He said that in doing so, not only had the efforts made by his Government to resolve the situation under discussion been disregarded, but also the work carried out by the ILO in his country. He recalled that the Committee of Experts had included his country in the list of cases that had been noted with interest following a close examination of the latest reports on Conventions Nos. 87 and 98. He said that he would take advantage of this opportunity to join forces and reiterate here his complete willingness to resolve the problems raised by the Committee of Experts. President Arias had taken office on 8 May, and yet cases were being discussed that went back to 1993, 16 years ago, under other administrations. He recalled his Government's commitment in relation to Convention No. 144, which called for dialogue to be recognized as an effective instrument for the application of international labour standards. All the specific situations referred to by the Committee of Experts (slowness of recourse procedures in the event of anti-union acts; legal restrictions on the right to collective bargaining in the public sector; the subjection of collective bargaining in the public sector to criteria of proportionality and rationality; and collective bargaining in the private sector) had received special attention from the previous government authorities. In relation to the slowness of recourse procedures, he said that this issue had been addressed seriously and significant progress had been achieved, which had been noted with interest by the Committee of Experts. He added that both the executive and the judicial authorities made unstinting efforts to find a satisfactory solution to this situation. In accordance with the objective of guaranteeing flexible and rapid judicial procedures on labour matters, his Government was pleased to be able to indicate that a Bill to reform labour procedures was under discussion in the Legislative Assembly. The Supreme Court of Justice had initiated the draft reform, with the support of the Government of Canada, through the project for the strengthening of labour administration in Costa Rica (FOALCO I), implemented by the ILO Subregional Office in Costa Rica, with the active participation of the Ministry of Labour and Social Security and the social partners. The representatives of employers' organizations and trade unions had examined and analysed the Bill, and had reached agreements taking into consideration the recommendations of the Committee on Freedom of Association. He emphasized, as important aspects of the Bill, the establishment of a special very rapid procedure for the protection of persons with specific protected status, including workers with trade union protection. He also referred to the application of the principle of oral procedure, which was one of the most important innovations, as its application permeated all the procedures and made it possible to apply other principles, such as mediation, concentration and publicity. Furthermore, the Ministry of Labour was continuing to strengthen alternative means of conflict settlement through the administrative authorities in its awareness that this method would help to reduce the cases brought to the labour courts, thereby decreasing the congestion of the judicial bodies and streamlined legal processes. Through the Centre for the Alternative Settlement of Disputes (RAC) of the Ministry of Labour, it had been possible to increase the number of cases dealt with to 3,421 during the course of 2005, with an average number of applications for hearings of 2,926 cases. This meant that there was an alternative dispute settlement machinery, with the alternatives being administrative or judicial.

With regard to the restrictions resulting from various court rulings on the right to collective bargaining in the public sector, and the subjection of collective bargaining in the public sector to the criteria of proportionality and rationality, he said that this was a subject that had been examined on its merits by the Committee on Freedom of Association (Case No. 2104), on which the Government had kept it informed. It had also been examined by the Committee of Experts and the Conference Committee. On the specific aspects of the case, the Government of Costa Rica had always and repeatedly sought ILO technical assistance, and the Office had always been prepared to provide such assistance. The Ministry of Labour had reactivated the Higher Labour Council, a tripartite advisory body, and had submitted to the Council and to the members of the Legislative Assembly various bills to strengthen collective bargaining in the public sector, including bills for the approval of Conventions Nos. 151 and 154 and the reform of labour procedures. The executive authority respected the autonomy of the judicial authority, as required by the political Constitution, which provided in article 9 that "The Government of the Republic is elected by the people, representative, alternative and responsible. It is exercised by the people and three distinct and independent authorities: the legislative, the executive and the judicial authorities. None of the authorities may delegate the exercise of functions attributed to them."

The Constitutional Chamber of the Supreme Court of Justice, the highest court in the country, the judgements of which were binding and applicable to everyone, had ruled unconstitutional clauses in collective agreements in the public sector on the basis of the criteria, among others, of proportionality, equality, rationality. In contrast, the ILO held that clauses in agreements could only be struck down due to defects of form or failure to comply with minimum legal standards, including constitutional provisions. It was a subject that needed to be addressed. He was awaiting the full text of the ruling to evaluate its legal implications. However, there were also positive cases in which appeals for unconstitutionality concerning collective agreements in the public sector had been set aside, as had occurred in June 2005. The court had decided that the impugned standard was a result of collective bargaining carried out in accordance with the law and jurisprudence and that the impugned right did not constitute an excessive privilege for the workers. The ruling was a triumph for the trade unions. In this respect, and based on this background, the Government of Costa Rica was even more interested in strengthening international cooperation in this field and in requesting appropriate ILO technical assistance.

With regard to trade union representativity, he referred to ruling No. 5000-93, which marked legal history in labour matters in the country. In this ruling, the Constitutional Chamber had endorsed international standards, including those contained in ratified ILO Conventions, and protected "trade union representativity" as an important aspect of freedom of association, as set out and developed in Conventions Nos. 87 and 98. It had also afforded special constitutional support for the "right of representativity", in its broader meaning, afforded to workers irrespective of whether or not they were union members, as provided for in Convention No. 135 and Recommendation No. 143. As a result, collective agreements had been given constitutional backing in Costa Rica. What was under discussion now was whether certain clauses impugned by the Ombudsperson for Inhabitants and an opposition political party should be declared void on the grounds that they were abusive. This was the issue of substance, and not whether the agreements themselves would be derogated. This matter had been addressed in a very responsible manner and confidence was being placed in ILO technical assistance to overcome the current problems. With regard to collective bargaining in the private sector, he recognized that there was a culture of resistance to the term "trade union" and that the cooperative movement had a more

favourable connotation. Even though it could be concluded that there were widely varying reasons which encouraged the existence of greater numbers of direct accords than of collective agreements, it had to be acknowledged that, as noted by the Committee of Experts, both had a legal basis and were subject to the free choice of the sectors concerned. Nevertheless, the legislation in his country gave constitutional rank to collective bargaining, which accorded it a privileged position, obliging the labour inspectorate to reject a direct accord when there existed a trade union recognized as competent to negotiate a collective agreement.

He emphasized the complexity of the matter and said that the Government was addressing it with serenity and the will to find a solution, and that it had requested ILO technical assistance. He took the opportunity to reiterate this request and expressed the hope that in the near future a document would be available offering objective responses to the concerns raised by the Committee of Experts. He respectfully requested the Committee to value all the efforts undertaken to resolve these problems through the strengthening of the judicial system, the right to collective bargaining in the public sector, the reform of labour procedures and the extension of social dialogue. He recalled that President Arias, in his speech the previous day to the Conference plenary, had clearly stated that for the Government of Costa Rica there were not and could not be any concessions in the protection of workers' rights. He had said that he wanted Costa Rica to continue, above all, to be a country of law, in which court decisions were always complied with, but also in which the courts undertook to give effect to the principle of rapid justice for all workers.

The Worker members pointed out that it was the fifth time that the Committee had examined the case in the past seven years, the other discussions having taken place in 1999, 2001, 2002 and 2004. They also emphasized that a complaint concerning some matters of great concern had been submitted by five Costa Rican trade union confederations to the Committee on Freedom of Association last May. It consisted of a serious case involving repeated violations of Convention No. 98. Moreover, in 2002, they had called for a special paragraph on this case but the Committee had not agreed to do so. At that time, the Government had indicated its willingness to resolve the case. Although the discussions that had taken place, they had covered all the points raised by the Committee of Experts, the conclusions had been too weak, an issue that had been raised by the Worker members. Today, despite the various missions carried out by the ILO, namely the direct contacts mission in 2001 and the advisory mission in April 2005, the situation was even more alarming. One of the most serious problems encountered were the restrictions imposed by the Constitutional Chamber of the Supreme Court on the right to collective bargaining in the public sector. The Court had annulled many clauses in collective agreements, essentially provisions granting economic and social benefits to workers whereas the purchasing power of wages over the previous 15 years had steadily declined. In certain cases, the Court had annulled clauses related to trade union dismissals which prejudiced the exercise of trade union activities. These decisions, which were the result of appeals by deputies, undermined voluntary collective bargaining, reduced working conditions in public administration to minimal standards and jeopardized the ability of trade unionists to carry out their activities.

The Committee of Experts had been formulating the same observations for several years. In the public sector, the law excluded important categories of workers and denied them their right to collective bargaining. A body composed of several ministers reportedly interfered repeatedly in the collective bargaining process in this sector. With regard to the private sector, the legislative framework put in place favoured solidarist associations and there were now 130 accords signed by non-unionized workers, compared with only 12 collective agreements. Furthermore, workers seeking to establish trade unions were dismissed. If they were not reinstated, they were obliged to find work elsewhere and were often subjected to serious discrimination by employers. Judicial procedures, and more specifically sanctions, were slow and often ineffective. Finally, the Government had still not adopted the draft legislation. The Worker members referred to a meeting held between the Workers' group and the current President of Costa Rica, Mr. Oscar Arias, the Minister of Labour and several other representatives of the country. They expressed their satisfaction with the meeting as they had noted a certain openness to resolve the problems and re-engagement in genuine dialogue. They hoped that dialogue between the Government and the social partners could take place. This would contribute decisively to resolving several of the problems raised. While respecting the independence and decisions of the Constitutional Chamber of the Supreme Court, the Worker members called on the Government to accept a mission which included members of the Committee of Experts. In the context of this mission, meetings between the three branches of the authorities, together with the social partners, could help bring the national law and practice into conformity with the Convention. Furthermore, the mission could meet members of the Constitutional Chamber of the Supreme Court to discuss the violations of Convention No. 98. The independence of the judiciary in no way implied that it could act in total impunity and trample underfoot the rights enshrined in international law, such as the right to voluntary collective bargaining.

Social justice was at the heart of democracy and the right to organize and collective bargaining was its foundation. Weakening it through rulings, regulations, laws and practices violated Convention No. 98. The Worker members asked the Government to provide information on the points raised by the Committee of Experts in its conclusions, namely to order an independent investigation into the particularly high number of direct accords concluded with non-unionized workers and to provide statistics on the number of collective agreements concluded in the public and private sectors. Furthermore, they requested the Government to provide detailed information in its next report on all the points raised in the discussion, the measures adopted and the results achieved. It would also be desirable to ratify Conventions Nos. 151 and 154, which were directly related to Convention No. 98. The recently elected Government had inherited this very complex case of the violation of Convention No. 98. Nevertheless, despite the promises made, the situation had lasted for many years and the situation of workers was deteriorating. It was therefore to be hoped that the Government, as well as the executive and judiciary authorities, would take measures to promote the application of Convention No. 98 and bring national law and practice into conformity with it.

The Employer members thanked the Government representative for his participation in the discussion and recalled that this was the fifth occasion during the past seven years on which the Committee had discussed the case. However, it was clear that there was a will to make progress in the case. The Government had accepted a direct contacts mission, followed by an advisory mission the previous year, in accordance with the Committee's conclusions. It had prepared new legislation, which had been examined with interest by the Committee of Experts, and was considering the ratification of Conventions Nos. 151 and 154. There was therefore substantial evidence of goodwill and the Worker members had emphasized the positive nature of the meeting that they had held with the recently installed President of the country. In view of the direction in which the case was moving, it was not necessary, in the view of the Employer members, for the case to appear on the list of individual cases almost every year. Four main problems had been raised by the Committee of Experts. The first of these concerned the slowness of the procedures available in cases of anti-union acts. In this respect, a new Bill had been prepared with ILO assistance which, with certain exceptions, had the agreement of the social partners. This suggested that the environment was conducive to the adoption of legislation. With regard to the restriction of collective bargaining in the public sector, the comments made by the Committee of Experts were quite limited in scope, and even more so than in the 2004 observation. Once again, the Government referred to draft legislation to address the problem, which had been noted by the Committee of Experts. Another problem raised concerned the declaration of clauses in collective agreements as being unconstitutional. The Employer members noted that this occasionally occurred under other legal systems if the collective agreement violated a provision of the Constitution. Clearly, constitutional provisions were binding on all parties. The fourth issue raised by the Committee of Experts was the high number of direct accords in relation to the number of collective agreements. This was not in itself a violation of the Convention, which merely called for the promotion of voluntary collective bargaining. It might be the case that the unions involved should look into the root causes of such a situation so as to gain a clear understanding of why there were more accords. Perhaps the workers' organizations concerned could reflect on how they could become more attractive partners to the parties involved. With reference to the proposal by the Worker members that the Government should agree to receive a mission consisting of members of the Committee of Experts, the Employer members believed that the proposed measure was too heavy in relation to the clear progress that was being made in the case. Moreover, it raised the question of whether such a mission went beyond the mandate of the Committee of Experts. There was every indication that the Government was giving serious consideration to all the issues raised by the Committee of Experts.

The Worker member of Costa Rica reiterated that the union leadership had always participated in social dialogue in spite of the gravity of the situation regarding freedom of association in the country. This had been instrumental in concluding several agreements on different issues. However, the situation had not progressed regarding the recommendations made by the Committee of Experts, the Conference Committee and the Committee on Freedom of Association. In fact, in the last ten years it had presented more than 20 complaints to the Committee. The Workers were aware that the Government was confronted with an old problem but it rejected the argument that the problem lay in the division of state powers. He believed that the problem lay with the State as a whole and with its institutional bodies. The speaker expressed his concern that none of the outstanding issues were being resolved: the reintegration of union leaders dismissed for anti-union reasons or the slowness in obtaining legal rulings, among others. The report of the Committee of Experts was very complete and also included comments related to the non-application of Convention No. 87. In fact, if Convention No. 98 was not applied then Conventions Nos. 87 and 135 were also violated. This was noted by the mission which visited the country in 2001. The situation was even more serious today as apart from passing acts on which he had severe reservations, the Constitutional Chamber had declared unconstitutional clauses in collective agreements, which meant that the recommen-

dations of the Committee of Experts were not taken into account. On the one hand, the Constitutional Chamber rejected recourse on violations of freedom of association and on the other declared unconstitutional clauses in collective agreements. In addition, it was unacceptable that recourse made by persons not directly related to the negotiations, such as representatives of a political party, was receivable. Many solutions had been proposed, as, for example, the proposal made two years ago to initiate a round table, social dialogue or to hold consultation between a member of the Committee of Experts and the legal authorities in the country. However, in practice there had been no concrete solutions.

The Employer member of Costa Rica noted that there were sufficient arguments of a legal nature to demonstrate that this was a problem that belonged to Costa Rican institutions where democracy required absolute respect for the division of power. Costa Rica should be considered as an exemplary democracy, with a long history of respect for human rights and social legislation. The 1943 Labour Code had been progressively modified to bring it up to date. There were many reforms that had been achieved through social dialogue. One of the most important issues in the discussion related to the Constitutional Chamber rulings resulting from recourse by the Ombudsman and by the General Attorney of the Republic. The Constitutional Chamber had the duty to interpret legislation and ensure its conformity with the national Constitution. The employers, the unions and the Government knew that they could not plead rights acquired that were against the national Constitution. In the case of collective agreements, the clauses considered as unconstitutional in respect to the rights of public servants were in question, rather than the instrument itself. The intent was to eliminate abuses that also affected the credibility of the social partners. He added that there was willingness to change. The Government was committed to decent work and fundamental rights, including the urgent need to make good the current shortcomings in collective bargaining in the public sector. The reforms required were mostly already before the Legislative Assembly. The negotiations were difficult but the problem actually lay in systemic difficulties. He concluded by noting that Costa Rica should not have been included in the cases discussed in the Conference Committee and believed that there were other countries for which ILO technical assistance was more urgent.

The Worker member of Nicaragua noted that the ruling of the Constitutional Chamber to declare unconstitutional clauses in collective agreements was a dangerous development which significantly affected the authority of both public and private enterprises and negatively impacted the rights of workers. When parties negotiated a list of demands, they did so in good faith as a principle of negotiation. For this reason, it was contradictory that the Constitutional Chamber declared unconstitutional clauses in collective agreements and, as a result, rights obtained through negotiations held in good faith. This decision to rule unconstitutional clauses of collective conventions violated Convention No. 98 and had a negative impact for Costa Rica and on the working conditions of 500,000 Nicaraguan workers in Costa Rica. For some months, the same Constitutional Chamber had forbidden non-Costa Rican workers to take up trade union leadership posts. At the same time, it had allowed some enterprises and institutions to limit the right to unionize Nicaraguan workers in Costa Rica. The Government needed to take measures to avoid collective agreements being blocked by legal rulings. The President of the Republic had declared to the plenary of the Conference that Costa Rican democracy was the oldest on the continent and that respect for workers' rights, including the right to negotiate collective agreements, was the basis of decent work and social stability. The speaker requested the ILO to ensure follow-up on the situation, including on the rights of Nicaraguan workers' working conditions and to provide technical assistance to ensure respect for freedom of association and collective bargaining. In conclusion, he rejected the presidential statement that the Government had a migration problem, as this was a denial of the fact that Nicaraguan workers were helping and supporting the Costa Rican economy.

The Government representative reiterated the Government's will to push forward reform that had already been presented to the Higher Council of Labour and the Legislative Assembly, and requested ILO technical assistance to achieve suitable solutions that would allow the situation to be moved forward in the framework of the national legal system.

The Worker members stated that this was a case of continued failure to apply the Convention and that questioning the credibility of the national trade unions did not help to improve the situation. Having noted the strong intentions announced by the Minister of Labour and the position expressed by the President of the Republic, the Worker members considered that a direct contacts mission, which would also meet with members of the Constitutional Chamber, would assist in achieving progress in the near future. Such a mission would also strengthen social dialogue in the country.

The Employer members stated that this was a case in which some progress had been made over the years, but some additional steps were necessary. The Committee should welcome the positive attitude of the Government and its request for technical assistance. The Committee should urge the Government to bring as soon as feasible its law and practice into conformity with the Convention.

The Committee noted the information provided by the Government representative and the debate that followed. The Committee observed with concern that the pending issues referred to: the slowness and inefficiency of recourse procedures in cases of anti-trade union discrimination; the restrictions to collective bargaining rights in the public sector due to several judgements of the Constitutional Chamber of the Supreme Court; the submission of public sector collective bargaining to criteria of proportionality and rationality, by reason of the case law of the Constitutional Chamber of the Supreme Court, which had ruled as unconstitutional some clauses of public sector collective agreements; and the enormous gap between the very low number of collective agreements signed with trade union organizations in the private sector, and the number of direct accords concluded by unorganized workers.

The Committee noted the information provided that an advisory mission had taken place in April 2005 and that, for several years, draft legislative or constitutional amendments had been submitted to the Legislative Assembly, with a view to remedying the delays in proceedings that applied in cases of anti-trade union acts and the restrictions in public sector collective bargaining. According to the Government, a draft bill to reform labour procedures so as to resolve the problems of judicial delays, which had already been attenuated by the introduction of the system of alternative means for the settlement of disputes, had recently been submitted to the legislative assembly.

The Committee noted the Government's statement that the first steps of the new Government had been to reactivate the Higher Labour Council, a tripartite dialogue body, and to give renewed impetus to the draft laws that had been submitted to the Legislative Assembly, including those relating to the ratification of Conventions Nos. 151 and 154. The Government was awaiting the full judgement of the Supreme Court relating to the annulment of certain clauses in some collective agreements. Collective agreements were recognized by the Constitution, which also obliged the labour inspection to reject a direct accord with non-unionized workers when a union already existed and was entitled to negotiate.

The Committee emphasized the significance of the problems raised by the Committee of Experts, and the importance of putting in place adequate and speedy measures of protection against anti-trade union acts, as well as full recognition in law and in practice of voluntary collective bargaining in the public and private sectors, in the terms set out in the Convention.

Taking into account that the issues mentioned above had been raised for several years, the Committee expressed the firm hope that the necessary measures would be taken in the very near future and that the draft laws currently being examined would be adopted so as to ensure the full application of the Convention in law and in practice. The Committee urged the Government to make all necessary efforts in this regard and requested it to provide the Committee of Experts with a detailed report in this respect. The Committee welcomed the Government's request for ILO technical assistance and therefore decided that a high-level mission from the Office should visit the country to facilitate the resolution of the pending difficulties in the application of the Convention.

GUATEMALA (ratification: 1952). **A Government representative** (Minister of Labour and Social Planning) announced that the Government, employers and workers were in the process of negotiating a tripartite agreement and expressed the hope that it would allow solutions to be found to outstanding problems. He stressed the importance of control mechanisms as an instrument of cooperation for effective application of labour standards in his country, and noted that the Committee of Experts' comments offered guidance for improving application of international labour Conventions in order to achieve greater social justice and economic development. To make headway, assistance was required from the ILO, the member States of the Committee, the employers and above all the workers. As regards the Committee of Experts' requirement that complete information be provided on the application of Convention No. 98, he declared that, in accordance with the agreement reached following the direct contacts mission in 2004, the Subregional Office in Costa Rica would provide technical assistance by organizing a tripartite seminar on labour trade union rights in the *maquila* sector. According to the trade union public registry, there were nine trade union organizations relating to the *maquila* textile industry, and three collective agreements while others were currently being negotiated. The speaker stated that there was a project to develop a national policy for free advice for workers seeking to associate, which would be under the supervision of the Ministry of Labour throughout the country. This advice would include materials on union rights contained in national and international legislation, a description of legal requirements for the setting up of a trade union and the administrative paperwork required for recognition of its legal personality indicating the office in which the administrative statutes should be deposited. This documentation would be produced in at least two Mayan dialects, among the most widely read in the country. The speaker noted that the Government had initiated the setting up of

a rapid intervention mechanism within the Tripartite Committee on International Labour Affairs for complaints related to trade union rights, which had already heard nine cases brought voluntarily by trade unions. The Government had also facilitated open dialogue so as to reach agreements in a climate of respect. The Government and the Tripartite Committee shared the aim of shedding light to complaints for violations of trade union rights. To this end, the Trade Union Confederation of Guatemala (UNSITRAGUA) had been invited to present to the Tripartite Committee all complaints presented to the ILO supervisory bodies. The organization had agreed and had attended a meeting in which it had presented its viewpoints as well as a list of issues. The speaker indicated that he would inform the ILO supervisory bodies shortly of the results and progress made.

The Government continued to promote social dialogue and the Tripartite Committee on International Labour Affairs met continuously, having reached major tripartite agreements on the following points:

– the Tripartite Subcommittee on Legal Reform had scheduled fortnightly meetings to study, analyse and approve legislative reforms which would help overcome obstacles to the exercise of trade union rights, trade union activities and union financial administration;
– the Tripartite Committee on International Labour Affairs had also met to study and report on court procedures relating to labour violations and social security and results were expected very shortly;
– the Ministry of Labour and the Tripartite Committee had maintained constant dialogue with the Labour Committee of the Congress of the Republic to allow its members to approve the bills agreed to in a tripartite manner. In this respect the Government had involved the legislative and judicial bodies in the work of the Tripartite Commission on International Labour Affairs, through their representatives, as they were the key participants in the system of labour relations in Guatemala. This was an example of the way it had worked through consensus in this process.

With regard to the Civil Service Bill, the Government representative pointed out that it was the result of consultations between the social partners and other sectors such as universities, research centres, municipal associations, the employers' sector, political parties, development councils, NGOs, foundations, associations and the trade union sector (unions, federations, confederations and trade union centrals of the public and municipal sectors). Since 2004, the Presidential Commission for the Reform, Modernization and Strengthening of the State and its Decentralized Bodies had convened the municipal and public sector trade unions to take part in workshop, in which 56 organizations had participated. In March 2005, the final version of the Bill had been presented to the Director of Human Resources of the government bodies and three analyses and evaluations carried out by the advisors of COPRE of the General Secretariat of the Presidency and of the Ministry of Labour and Social Insurance. The Bill had been presented to the Congress of the Republic and submitted to the Labour Commission which held meetings and organized a seminar to reach an agreement on the Civil Service Bill with the participation of representatives of workers' organized in trade unions, federations, confederations and centrals. Furthermore, the Civil Service Bill was one of the priorities of the Tripartite Sub-Commission on Legislative Reform of the Tripartite Commission on International Labour Affairs. It would be wise to mention that the Labour Commission of the Secretariat Congress of the Republic had recently pronounced itself against the Bill. By virtue of what was explained above, it could be demonstrated that the sectors concerned had been consulted on the above Bill; the results of these consultations would be communicated in the future.

Regarding the non-existence of sufficient guarantees in dismissal procedures for public servants, he stated that the justified termination procedure for employers in the public sector contained legal guarantees at the administrative level, that is the National Organization of the Civil Service, as foreseen in sections 79 and 80 of the Civil Service Act. Similarly, at the judicial level, guarantees were provided by the Labour Code, the Law on Unionization and Regulation of Industrial Action by State Employees and especially the Constitution of the Republic of Guatemala, as the country's supreme law.

Concerning the alleged failure of the General Labour Inspection in labour disputes in municipalities, he stressed that the General Labour Inspection was competent to act as a conciliation body. Section 191 of the Law Code provided that labour relations between public entities and their workers had to be governed by specific legislation on the matter (Civil Service Act or Municipal Service Act). In this respect, in 2005 it intervened at national level in 104 labour disputes between municipalities and their employees. Given the social importance of the labour disputes and after the creation of a Conflict Resolution Unit (RAC) within the Ministry of Labour, this conciliation activity had been delegated to the latter, which had already intervened on 43 occasions. The speaker asked that through this historical Conference, the importance of the Conflict Resolution Units be recognized in that they be granted the legitimacy that they deserved.

Regarding restrictions on the exercise of trade union rights by labour tribunals, the Government representative indicated that there were 509 appeals pending before a special Chamber of the Supreme Court against decisions related to reintegration. Such appeals were lodged by workers and employers and, until these cases were resolved, effective reintegration was not possible. According to Supreme Court statistics, there had been no complaints regarding the slowness of procedures on sanctions for labour law infringements nor had there been any complaints for violations of collective agreements on working conditions. There were 36 complaints for dismissal of trade unionists filed with the tribunals, of which 34 concerned the public sector and two the private sector.

As regards violence against trade unionists, the speaker asserted that there was an improvement in the climate of tolerance and harmony between the different actors. It was important to take into account not only the number of judgements rendered in cases concerning violence against trade unionists, but also the fact that the Public Ministry had carried out investigations in some 83 cases. According to data supplied by the Special Public Prosecutor's Office responsible for investigating offences against trade unionists, the bulk of complaints lodged by trade unionists referred to threats which were settled by alternative means. In some cases, the investigation could not rely on the cooperation of the plaintiffs. The speaker considered that progress was made by the fact that public ministry employees leading the investigations participated in two courses on ILO and the application of international Conventions.

In conclusion, the speaker stated that the government of Guatemala continued to make great efforts, and that the progress made was significant and demonstrated that the country was in the process of developing its labour legislation, but that it still needed the support of the various actors. He expressed the hope that Guatemala would not be the object of a special paragraph but on the contrary that confidence would be expressed vis-à-vis the Government through cooperation, such as that which had already been received from the ILO.

The Employer members thanked the Government for the information provided in its statement which assisted the Committee in understanding the situation underlying the Committee of Experts' observation. This case had been discussed several times since 1991 both under Conventions Nos. 87 and 98 and the Employer members questioned the practice of repeated discussions in the Conference Committee in cases where the Committee of Experts had actually been able to note progress. It was unfortunate that the Committee of Experts did not elaborate on the context and the facts of the case, which prevented a meaningful discussion. The Committee of Experts could not assume that the Conference Committee was familiar with the content of Committee on Freedom of Association cases. Nevertheless, the Committee's work had to remain based on the Committee of Experts' report.

The Worker members observed that this case of non-compliance with the rights to organize and bargain collectively had, unfortunately, become a chronic one, examined without interruption by the Committee of Experts since 1999. Over the years the ILO had expended considerable effort in addressing this situation: through direct contacts missions; the renewed provision of technical assistance measures, in 2005, with respect to Convention No. 87; and most recently the intervention by the ILO Director-General in connection with death threats aimed at a trade unionist. In spite of these efforts, the realization of trade union rights, particularly the right to bargain collectively, was constantly thwarted in Guatemala – a country that had become the second most dangerous in Latin America for trade unionists. The labour tribunals operated with delays of up to ten years. The non-enforcement of decisions, the lack of impartiality in some quarters of the civil service, the inadequate monetary penalties and the widespread corruption throughout the administration were well-known facts. The non-elucidation of cases of harassment, threat or assassination of trade unionists and the non-reinstatement of unfairly dismissed workers and unionists were real problems. To make matters worse, the labour inspectorate – which ought to constitute the last defence against such abuses – had just been stripped of its enforcement powers by the Constitutional Court.

The Worker members seriously doubted that the instances of social dialogue mentioned by the Government truly reflected the principles enshrined in Convention No. 98. The persistence of the problems noted would require the establishment, at different levels, of more effective dialogue mechanisms. A culture of dialogue was lacking at all levels. In Guatemala, violations of the principles laid down in Convention No. 98 were as prevalent in the private sector as in the public. At the municipal level, a third of the employees exercising trade union leadership were dismissed; similar methods prevailed in other branches of the administration, as well as in export processing zones, the agricultural sector – including the large farms belonging to those associated with trade union leaders – and in the informal economy. As a result, trade union density would stand at present at a mere 0.5 per cent of the economically active population, as opposed to 5 per cent ten years ago, and that only 17 per cent of the existing trade unions were able to successfully conclude collective agreements. Few were the collective agreements in force, whereas the number of trade unionists dismissed for attempting to bargain collectively was too great to count. Additionally, at least 60 per cent of the collective agreements concluded were not respected. This deplorable situation was the result of a series of practices that effectively thwarted the exercise of all trade union rights, including the rights to organize, strike, and enter into collective agreements. In light of the above, the Worker members recommended the establishment of an ILO permanent mission to Guatemala, as soon as possible and for the purpose of securing the

observance of Convention No. 98 in national law and practice. They stressed that it was vitally important, for the time being, for the Government to produce exact figures, redouble its efforts to overhaul the judicial system and establish a bona fide system of social dialogue, and promote a culture of social dialogue and consultations at all levels.

The Worker member of Guatemala stated that the Tripartite Committee on International Labour Affairs had not achieved the progress expected. In addition, anti-union mentality was so deep-rooted that most trade unions were virtually reduced to nothing before they could act. In the informal sector, where there were neither employers nor collective bargaining, trade unions proliferated. It was frustrating to note that ten years after the conclusion of the peace agreement, unionization had declined from 5 to 1 per cent. At municipal level, trade unions were under attack. One-third of municipalities had dismissed those employees operating as trade unionists with the aim of eliminating trade unions. In EPZs, it was impossible to associate and form unions. Faced to investors who were looking for cheap labour, trade unions represented a means of protecting the application of regulations on safety and health at work, payment of social coverage and of appropriate salaries. In reality, there were two or three collective agreements in operation, applying to 3,000 workers. However, EPZs employed 100,000 workers. The famous codes of conduct which had been presented at the time as the solution to all problems, had proved ineffective. He said that a particularly representative example was the case of a bank whose management had systematically attacked the trade unions since 2002 and had mainly abstained from using the "alternative resolution of labour conflicts" framework, as recommended by the Ministry of Labour. Thanks to legitimate pressure by trade unions and ILO support, the law on the public service, which limited union rights and powers of negotiation, had not been approved by the Labour Committee of the Congress of the Republic. The climate of violence seriously affected trade unions. Every time trade union organizations demonstrated their opinions on issues of national importance, raids were carried out on their headquarters. In addition, on orders from the authorities, the labour tribunals and judicial authorities did not enforce sentences ordering the reintegration of workers unfairly dismissed for having attempted to form a trade union or for having supported claims. Furthermore, the penal code still included provisions which allowed penal sanctions against union leaders who had acted to defend their rights.

The Employer member of Guatemala stated that the case called for comments on the working methods of the Committee, firstly regarding its limits in drawing up its report. The Committee was not a tribunal and should not examine evidence or deliver judgements. The Committee was mistaken when it took allegations presented by trade unions at face value and did not take account of information provided by the Government. It carried out its evaluation and considered that problems persisted without mentioning progress mentioned by the Government. The Committee also did not take into account the current social dialogue, according to which it had been established that it was not necessary to develop a Code of Labour Procedure. All of the foregoing showed that the report of the Committee of Experts did not reflect the situation in Guatemala. The speaker requested that references to this Code be struck out in future and that progress achieved by the Government in the field of work be mentioned. Secondly, he noted that the inclusion of Guatemala in the list for this year undermined the credibility of control mechanisms as selection was based on reasons that went beyond ILO objectives. This was illustrated by the repeated inclusion of cases from the region, particularly from Central America, which created a flagrant regional imbalance, while leaving aside more serious cases. For two years, four countries from the region had been included in the list while a major trade agreement was being negotiated. In addition, the only issue of substance noted in the present case was the low level of unionization, which was due to the attitude of certain employers and to the judicial system. In this respect, he considered that union leaders had to show more positive leadership to ensure, along with the employers, the creation of new and better quality jobs. He asked the Committee to suggest that the Committee of Experts should deepen their study of the causes of this problem without making judgements which did not take into account the support of other parts of the ILO, which had made previous studies of the issue.

The Government member of Norway, speaking also on behalf of the Government members of Denmark, Finland, Iceland and Sweden, pointed out that national and international organizations had reported on numerous occasions anti-union dismissals in Guatemala. At the same time, there were several cases of failure to comply with court orders to reinstate dismissed trade union members and there was a general tardiness to impose penalties for breaches of the labour legislation. It was of utmost importance that legislation intended to secure trade union rights was applied in practice. If the principle of non-discrimination was not upheld, there was no ground for trade union activities. He expressed regret that steps taken to tackle these problems, having been addressed for years, had so far been unsuccessful, and he urged the Government to bring its law and practice into conformity with the Convention. The speaker also noted the indications that the new bill on the reform of the civil service did not fulfil the requirements of Convention No. 98. He urged the Government to make every effort to ensure that future legislation was consistent with the provisions of the Convention and, in order to guarantee that outcome, to continue the dialogue with the relevant social partners.

The Worker member of Norway observed that this was the ninth consecutive year that the Committee has discussed serious violations of Conventions Nos. 87 and 98 in Guatemala. Each year the Government has asked for time to rectify breaches of ILO Conventions. Yet, workers in Guatemala continued to be the victims of flagrant violations of labour rights. Upon the forced merger of two state-owned banks, corruption and mismanagement were rampant. When the trade unions started fighting the corruption, workers were harassed and dismissed and UNSITRAGUA leaders received death threats. However, the authorities did not take any action to protect trade unionists. There were many other cases in which unionists were harassed, dismissed or threatened when they began to organize and present collective demands. At the same time, court decisions ordering reinstatement of dismissed trade unionists were not implemented. The fact that they were only two trade unions with some 53 members in the maquila sector was highlighting the obstacles faced by workers in exercising their trade union rights in that sector. The speaker acknowledged that a new body had been created by the Government to promote alternative solution of conflicts. However, this body had limited resources and no enforcement authority. The Committee of Experts' comments showed that this measure was insufficient in the current situation. In spite of assurances of progress made by the Government, the Nordic workers agreed with the Committee of Experts that a discrepancy existed between law and practice. Trade unions were in reality prevented from organizing and concluding collective agreements. In light of the fact that the Government had continually made promises that it seemed unable to keep, the ILO should consider serious measures to rectify the situation.

The Worker member of Colombia remarked that although the case came before the Committee from year to year, the situation was worsening. He took note of the information provided by the Ministry on the measures that would be taken to guarantee freedom of association, but regretted that in reality, these guarantees were not applied either by the Government or by the majority of employers. He was concerned to see that the administrative and judicial authorities were ignorant of international labour standards and did not apply the few court decisions that were handed down to reinstate workers to their job. As regards the reference made by the Government and the employers to the subject of the lack of trade union representation, he stated that this reflected the absence of guarantees for the exercise of trade union activities. In fact, workers could not exercise their union rights without running the risk of dismissal. He asked the Government to appropriately protect workers in the informal sector who were victims of abuses by the authorities. He concluded by appealing to the Government to deepen their investigations on death threats against trade unionists.

The Worker member of India stated that the right to organize and the right to collective bargaining were fundamental rights of workers. He expressed support for the grievances of the Guatemalan workers. The Committee of Experts had found that current legislation and Government practice promoted anti-union discrimination in violation of Convention No. 98. The speaker urged the Government to heed to the recommendations of the Committee of Experts and to take the necessary measures to bring its law and practice into conformity with the Convention.

An observer representing the International Confederation of Free Trade Unions (ICFTU) stated that the percentage of union affiliation had declined from 5 to 1 per cent over the last ten years since the signing of the peace agreement. This demonstrated the lack of freedom of association in Guatemala. As regards the application of the Convention itself, he noted that the comments of the Committee of Experts were still valid regarding the insufficiency of legal decisions ordering the reinstatement of workers dismissed for trade union activity, the slowness of judicial proceedings in cases of infringements, the absence of protection for union rights, especially trade union negotiation, the violation of collective agreements and anti-union dismissals. Concerning anti-union dismissals, in particular, he said that when workers sought to set up trade unions, they were dismissed before the labour inspection had the time to intervene. The Government had not observed any of the recommendations made by the Committee of Experts. It had also not responded positively to complaints made by UNSITRAGUA to the Tripartite Committee on International Labour Affairs. Concerning the draft Civil Service Act, the Committee of Experts had given an unfavourable opinion as there had been no appropriate consultations on this text. The threats to trade unionists continued and there was no system of protection. In view of the above and of the seriousness of violations, he considered that the case of Guatemala should be the object of a special paragraph.

The Government representative stated that his Government recognized that there were problems in the country but that it was making great efforts to solve many of these problems. Certain trade union leaders appeared to be living as if they were still in a state of war, when what was needed was to look ahead and for each and every one to try to see what they could do together to overcome the difficulties of the current situation. He strongly emphasized the political will of the Government to promote social dialogue and consultation as means by which to achieve a State, in which the rule of law reigned, provid-

ing peace and harmony for all Guatemalans. The meeting the Government was presently holding with workers and employers to finalize the details of a tripartite agreement was evidence of this political will.

The Employer members stated that the Government of Guatemala appeared to be genuinely interested in a tripartite resolution to the issues at hand, and this willingness should be noted in the conclusions. There were clearly issues in the law and practice concerning Convention No. 98, but the Employer members sensed that the Government had the goodwill to address these issues. ILO technical cooperation might be useful in achieving full implementation of the Convention.

The Worker members stated that the discussion had brought out in the open the serious problems that the workers of Guatemala permanently faced. Even though measures had been taken to answer the comments of the Committee of Experts, they were both insufficient and inadequate and had not provided concrete answers to the non-compliance with Convention No. 98. The situation was still serious, with a great number of workers today still being members of a union but unable to conclude a collective agreement or have it respected, and still exposed to a diversity of pressures, including threats against their physical integrity. Considering that the situation was least favourable for the implementation of the Convention which resulted in poor level of unionization and low number of collective agreements, the Worker members asked the Government to recognize that the problem existed and to consider the footnote to be an urgent request for constructive changes. The Worker members called upon the Government to provide statistical information and to reinforce a permanent framework of social dialogue in the search of lasting solutions with the assistance of the Office which should visit the country and help to put in place a more permanent ILO presence.

The Committee noted the statements by the Government representative and the debate that followed. The Committee noted with concern that the pending problems related to cases of failure to comply with court orders to reinstate dismissed trade union members; tardiness of the procedure to impose penalties for breaches of the labour and trade union legislation; the need to promote trade union rights in export processing zones (maquila enterprises); numerous anti-union dismissals in the private and public sectors; inadequate guarantees in the procedure for the termination of public servants; the small number of collective agreements and the violation of an important number of them.

The Committee took note of the Government's statements according to which the national tripartite delegation was in the process of negotiating a tripartite agreement which would help resolve the problems raised; three collective agreements had been concluded in the export processing zones sector, others were being negotiated and a seminar on labour and trade union rights in the export processing zones sector was planned; nine cases had been examined in the framework of the rapid intervention mechanism in cases of denunciations relating to trade union rights and UNSITRAGUA had already presented to the tripartite committee its denunciations of violations of trade union rights. The Committee took note of the statements on the outcome of the activities of the tripartite committee mentioned by the Government, and that the Labour Committee of the Congress had issued a decision against the Civil Service Bill. The Committee finally noted the figures provided by the Government on the number of conciliations and the number of actions for protection of constitutional rights (*amparo*) against decisions ordering or not ordering reinstatement, and the information that it had no knowledge of denunciations due to delays in the proceedings concerning sanctions or violations of collective agreements.

The Committee emphasized that the pending problems represented serious violations of the Convention. The Committee further noted the grave concerns raised in respect of the continuing climate of violence and the serious impact that this had on the trade union movement as a whole, as well as the delays in judicial proceedings concerning appeals submitted by dismissed trade unionists.

The Committee requested the Government to take the necessary measures without delay to bring the law and practice into full conformity with the Convention in the near future, in both the public and private sectors, and to send a complete report to the next session of the Committee of Experts. The Committee invited the Government to pursue its negotiations with the social partners with a view to establishing the appropriate mechanisms at all levels for full social dialogue and to considering the ways in which a stronger presence of the ILO in the country could facilitate this process. The Committee also urged the Government to adopt further measures for the effective protection of the rights set out in the Convention for workers in export processing zones. The Committee expressed the hope that in the very near future it would be in a position to note progress and recalled that the Office's technical assistance was available to the Government.

PAKISTAN (ratification: 1952). **A Government representative** welcomed the opportunity to engage the Committee in an open dialogue that would lead to a more effective promotion of labour rights in Pakistan. In keeping with Pakistan's commitment to respecting international labour standards, he noted that the Government had approved ratification of the Minimum Age Convention, 1973 (No. 138). The instrument of ratification was being prepared for submission to the ILO; upon ratification, Pakistan would be the second country in South Asia, and among a handful in Asia, to have ratified all eight fundamental ILO Conventions. The speaker observed that the fragility of Pakistan's economy throughout the 1990s clearly had an adverse impact on employment and working conditions in the country. A significant increase in poverty and unemployment marked this difficult period. The economy had been stabilized, however, through several wide-ranging initiatives aimed at strengthening regulatory policy and boosting private sector growth. Measures adopted under the Medium-Term Development Framework (MDTF), for instance, had resulted in reduced unemployment as well as a reduction in poverty from 34.46 per cent in 2001 to 23.9 per cent in 2005. Additionally, via several initiatives aimed at enhancing skills training and generating employment, the Government intended to continue to pursue the objectives of development and poverty alleviation. The speaker noted that steps had been taken to reform the legislation in the light of the concerns expressed in the Committee of Experts' 2005 observation. As regards the Industrial Relations Ordinance 2002 (IRO), following tripartite consultations, a bill to amend the IRO was drafted and submitted to the Cabinet; a Committee was established to examine the amending legislation, and would in due course make recommendations for the Cabinet's consideration. Measures to review and ultimately reform section 27-B of the Banking Companies Ordinance of 1962 and section 2-A of the Services Tribunal Act were also presently under way.

The speaker underscored that the Constitution of Pakistan provided clear guarantees of the right to form or join associations to all Pakistani citizens, including rural workers. Furthermore, the Ministry of Food and Agriculture and provincial governments had been advised to help streamline the work and activities of rural workers' organizations in keeping with the Government's obligations under Convention No. 98. Referring to the Committee of Experts' comments on the Pakistan International Airlines Corporation (PIA), the speaker noted that the repeal of the Chief Executive's Order No. 6 was sub judice before the Supreme Court of Pakistan. When arrived at, the decision of the Court would be transmitted to the ILO. The speaker stated that Export Processing Zone Employment Relations Rules had been prepared in response to the concerns raised regarding the denial of labour rights in this sector. These draft Rules had been sent to the Ministry of Law, Justice and Human Rights for review, and would be provided to the Committee of Experts once this process was completed. Finally, the speaker noted that the ban on trade union activities in the Karachi Electricity Supply Corporation (KESC) had been lifted. A dispute regarding registration of the labour union in the KESC was considered by the National Industrial Relations Commission (NIRC), which ordered that a referendum be held to prepare for the determination of a collective bargaining agent. The NIRC was making preparations for the referendum, following which labour unions would be fully restored in the KESC. The speaker concluded by stating that the above-noted developments demonstrated the Government's sincere commitment to fulfilling its obligations under Convention No. 98.

The Employer members stated that the Committee should take note of the announcement made by the Government concerning its decision to ratify Convention No. 138. The case under discussion demonstrated that ratification was one matter, but implementation was another. The application of Convention No. 98 had been discussed several times over the years, but a number of issues remained to be resolved. The Government informed the Committee of several decisions and measures taken or envisaged which would have to be examined by the Committee of Experts. The Employer members also noted that the existing problems were of a technical nature and that the Government appeared to be addressing them. They expected concrete progress in the very near future and urged the Government to bring its law and practice into conformity with the Convention in the very near future.

The Worker members expressed appreciation for the information supplied by the Government. They observed that this case had already been discussed in 2003, and prior to that in 1992. In this respect, they noted with regret that over the last 15 years the Government had failed to grasp the fundamental importance of Convention No. 98. The right to organize and bargain collectively was one that should be guaranteed to all workers; Pakistan ratified Convention No. 98 in 1952, yet continued to infringe upon the fundamental rights contained therein. As already noted in 1992, important sectors were excluded from the coverage of the Convention: the export processing zone sector; the railway, natural gas and petroleum industries; institutions established for payment of old-age pensions and charitable organizations; the national air and electricity companies; and finally the rural sector, if the workers in that sector enjoyed any rights at all. In addition, for the majority of public sector workers, no legal remedy was available when employers engaged in abusive practices. Employees in the banking sector faced fines or possible imprisonment for using facilities of the banking establishment in the exercise of their trade union activities during working hours. The interference of workers' and employers' organizations in the internal affairs of each other was still neither prohibited nor sanctioned by law. Finally, the principle of collective bar-

gaining continued to be undermined by a number of practices that violated the Convention. Unions representing less than one-third of the personnel were not entitled to conclude collective agreements. Once a trade union was recognized, no other union could apply for registration for a period of three years. Finally, the NIRC was empowered to designate or change a trade union simply upon the recommendation of the federal Government. The Worker members regretted that the same abuses and serious discrepancies between the national legislation and the Convention persisted. They also regretted the Government's procrastination and the fact that it never produced copies of the amendments, projects, rules or proposals that it announced.

The Worker member of Pakistan noted the information provided by the Government and supported the statements made by the Worker members. The efforts by the Ministry of Labour to ensure compliance with the Convention were welcome. The speaker elaborated on various issues raised by the Committee of Experts, such as the need to amend the Industrial Relations Ordinance, the issue of ensuring trade union rights of rural workers and the need for speedy adoption of the Service Regulations for workers engaged in export processing zones. Further, the Government needed to ensure that, in the context of privatization and deregulation, workers' rights and interests were protected. Despite the fact that Pakistan was still struggling with the grave consequences of the recent earthquake, it was crucial to address these matters as soon as possible.

The Government member of the Islamic Republic of Iran stated that his Government appreciated the statement made by the Government representative of Pakistan. It was important to consider the very difficult situation many countries endured in a globalized world in which it had become increasingly difficult to cope with enormous changes in the economy, employment relations and unemployment. It was also important to note the improvements made, and the good will shown by Pakistan and its Government should be commended for their efforts and should be assisted in overcoming remaining problems.

The Worker member of India recalled that both the All Pakistan Federation of Trade Unions (APFTU) and the ICFTU had expressed deep concern over the exclusion of several categories of workers from the scope of the Industrial Relations Ordinance (IRO), and therefore from the rights enshrined in Convention No. 98. The Committee of Experts, in repeated observations, had also commented upon the IRO's exclusion of several categories of employees. The Government had done little to address these exclusions over the years, and he asked the ILO to continue its efforts to urge the Government to extend the protection of Convention No. 98 to all workers.

The Government member of Cuba took note of the reform process on legal and administrative provisions to achieve conformity with the Convention. This demonstrated the commitment of the Government with workers' rights in Pakistan. He stressed that the report of the Committee of Experts and the current discussion should assist the Government to put into practice the changes required and recalled that Pakistan had recently suffered an earthquake that affected normal economic and social development. The speaker concluded by stating that the Committee's conclusions should show trust in the country and urged the Government to show proof of its willingness to put in place legislation in conformity with the Convention.

Another Government representative thanked the Committee's members for their comments and agreed that further efforts were necessary to ensure that the steps already taken led to the desired results. The labour policy of Pakistan fully reflected the country's obligations under international labour Conventions and was intended to ensure their implementation. She stated that the Government acknowledged that problems still existed, most of which emanated from the very difficult economic and social situation that her country faced in the 1990s. Her Government made a strong commitment to put in place a good industrial relations system and the steps taken in that direction were being reinforced. Bodies for tripartite consultation had been established and a special committee on labour matters had been set up. The Government was working towards resolving outstanding problems in the near future, while at the same time ensuring that measures taken would bring about lasting changes. In this regard, the Government was looking forward to further cooperation with workers' and employers' organizations, as well as the ILO.

The Employer members reiterated that some progress in resolving the outstanding issues had been made which should be taken into account in the Committee's conclusions. Nevertheless, the Government was requested to take the necessary measures to bring its law and practice into conformity with the Convention in the very near future and to provide full information to the Committee of Experts on the measures taken in this regard.

The Worker members noted with caution the information submitted by the Government. They requested the Committee of Experts to evaluate whether the current reforms had produced the expected results. They called upon the Government to continue taking the necessary measures so as to bring at last the national law and practice into conformity with the Convention, and reminded the Government that it could avail itself of the technical assistance of the Office.

The Committee noted the statements by the Government representatives and the debate that followed. The Committee took note of the information provided by the Government concerning its intention to ratify Convention No. 138.

The Committee recalled that the Committee of Experts had been making comments for several years on serious discrepancies between the Convention and national law and practice, particularly in relation to the denial of the rights guaranteed by the Convention with regard to protection against anti-union discrimination, protection against interference and promotion of collective bargaining, to a wide range of workers including workers in the EPZ sector, in the agricultural and banking sectors, in large segments of the public sector and in other installations and industries. The Committee of Experts had also pointed out that penal sanctions could be imposed in the banking sector for certain trade union activities and that the law contained overly restrictive trade union recognition requirements.

The Committee took note of the Government's statement concerning the legislative reforms under way, in particular, the amendment of the Industrial Relations Ordinance (IRO) of 2002, in order to bring the law and practice into conformity with Conventions Nos. 87 and 98. It also took note of further measures under consideration, in order to repeal penal sanctions for certain trade union activities in the banking sector and enable public sector workers engaged in autonomous bodies and corporations to seek redress against acts of anti-union discrimination. It further noted that Export Processing Zone Employment Relations Rules were being drafted in accordance with core ILO Conventions and that, as regarded the Karachi Electricity Supply Corporation (KESC), the National Industrial Relations Commission (NIRC) had ordered a referendum for the determination of the collective bargaining agent and was currently making the necessary arrangements in this respect.

The Committee also noted however, that some of the steps that the Government had stated it was taking to bring the legislation and practice into greater conformity with the Convention had already been referred to by the Government, yet no final solution had been observed in respect of the Committee of Experts' comments on this Convention, which was ratified in 1952.

While expressing its concern at the long-standing nature of these discrepancies and underlining that the issues raised by the Committee of Experts represented serious violations of the Convention, the Committee observed that the Government was making important efforts to resolve the pending matters. It thus expected that the Committee of Experts would soon be in a position to note concrete and positive developments relating to the application of this Convention. It requested the Government to take all measures necessary for the legislative reforms under way to be carried out in an efficient and rapid manner, and for all pending issues to be addressed without delay, so as to bring national law and practice into full conformity with the Convention in the near future. The Committee requested the Government to send before the next meeting of the Committee of Experts a detailed report containing full information on all issues raised, as well as all draft texts concerning the application of the Convention. The Committee recalled that ILO technical assistance was available to the Government.

SWITZERLAND (ratification: 1999). **A Government representative** noted that the comments of the Committee of Experts did not seem to take into account the fact that the Union of Swiss Employers, as opposed to the Swiss Federation of Trade Unions (USS/SBG), considered that Convention No. 98 was fully applied in Switzerland. He hoped that the Conference Committee could reach appropriately balanced conclusions in this regard. Regarding protection for anti-union dismissals, the Committee of Experts mentioned the complaint brought by the Swiss Federation of Trade Unions on 14 May 2003 before the Committee on Freedom of Association, the Government report of 31 March 2004, and the interim Committee report of 17 September 2004. In its reply, the Government had shown that there was not a majority of cases that supported the complaint by the Swiss Federation of Trade Unions. After the discussions of 17 November 2004, the Committee on Freedom of Association took no decision on substance, even though it considered that the sanctions applied by Swiss law were not sufficiently dissuasive to ensure efficient protection in practice against unfair dismissal for anti-union reasons. The Committee therefore proposed that the Governing Body adopt interim conclusions that invited the Swiss Government to produce a report presenting additional information on the development of the situation, since the complaint had been brought and on measures taken after discussion with the social partners to ensure proper protection against unfair dismissal for anti-union reasons. The Swiss delegation to the Governing Body had accepted the interim conclusions of 17 November 2004.

The Government representative stated that his delegation took note of the fact that the Committee of Experts concurred with the recommendations of the Committee on Freedom of Association, even though the examination of the case had not been fully completed. The Government would shortly adopt its supplementary report on the interim conclusions of 17 November 2004. This report referred to the situation described in the complaint by the Swiss Federation of Trade Unions of 14 May 2003. It was therefore clear that the speaker could

not now provide information that appeared in a report that had not been adopted by his Government. Accordingly, the Conference Committee should abstain from prejudging a possible recommendation of the Committee on Freedom of Association expected in November 2006. As regarded protection against acts of interference, the Swiss Federation of Trade Unions expressed its concern by citing enterprises expressly, which did not seem to correspond to ILO practice. The Conference Committee evaluated the extent to which the Convention was given effect by national legislation. In principle, it did not go into detail on denunciations relating to specific enterprises. In addition, the Government was not in a position to obtain all the necessary facts to be able to respond to the Committee of Experts' comments. Regarding promotion of collective bargaining, Article 4 provided that appropriate measures should be taken to encourage and promote collective bargaining between employers and workers' organizations. This Article featured two essential and complementary provisions, first, action by the authorities to promote bargaining between social partners, and, second, the voluntary nature of bargaining, which implied independence of the parties. The terms of Article 4, therefore, made clear the voluntary nature of collective contract bargaining by the social partners. The Convention did not require that ratifying States took any steps to constrain the social partners in their negotiations. States parties should offer, however, a framework that allowed the social partners to negotiate together working conditions as well as procedures to facilitate their bargaining.

In Switzerland, recourse to voluntary bargaining between workers' and employers' organizations with a view to concluding a collective agreement was based on long tradition. Voluntary bargaining was also helped by the fact the numerous federal laws, such as the Code of Obligations set only threshold standards (i.e. semi-obligatory) which could be derogated by collective agreements. The Act of 17 December 1993 on information and consultation of workers in enterprises also favoured negotiations. According to this Act, workers' representatives were given a right to participate in the following areas: safety at work and health protection, enterprise transfer, collective dismissals. Collective agreements were regulated by the principle of contract freedom, in full respect for the principle of independence of the parties. The State did not intervene in their negotiation or their conclusion. Collective agreements were regulated by sections 356 to 358 of the Code of Obligations, which laid down the rules concerning the parties, the form, the duration and the effects of collective agreements; these could be concluded by a workers' organization on the one hand and by an employers' organization or one or several employers on the other (section 356). Swiss legislation featured no restriction as to the recognition of trade unions for the purposes of collective bargaining. The Code of Obligations also stipulated that the clauses of a convention that constrained employers or workers to affiliate themselves to a contracting association were null and void (section 356a). Collective bargaining was encouraged by the creation of organisms and procedures that aimed to make it easier. The Swiss system responded to the requirements of the Convention in this respect. As it was noted in paragraph 247 of the 1994 General Survey on freedom of association and collective bargaining, the system should aim "to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and an administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement". Conciliation tribunals at cantonal and federal level met these requirements. According to section 35 of the Federal Act of 18 June 1914 on work in factories, the cantons were obliged to set up permanent public offices with a view to settling, in a friendly manner, disputes between manufacturers and workers mainly aiming at the concluding and renewing of a collective agreement. Cantons were authorized to extend the jurisdiction of these tribunals. They could intervene alone or at the request of the authorities or interested parties. The procedure was free and subsidiary to the one the parties would have agreed upon conventionally. At the request of the parties, the conciliation tribunal could become an arbitration tribunal. At the federal level, the conciliation tribunal was regulated by the Federal Act of 1949 on the federal conciliation tribunal on collective labour conflicts. The federal office could be set up on a case-by-case basis by the Minister of the Economy, who intervened only at the request of the parties. The procedure was rapid, oral and free and was subsidiary to the one foreseen as a conventional tripartite conciliation organism. At the parties' request, the Federal Office of Conciliation could also issue an arbitrary award.

In addition, the Government's report of 2001 specified the circumstances in which the Ministry could take direct action to facilitate the renewal of a collective agreement, for example in the construction sector. As the conclusion of a collective agreement was based on the principle of contractual freedom and independence of the parties, it seemed difficult to imagine a state intervention aimed at constraining the parties to negotiate if they did not wish to. The application of the Convention was therefore ensured in Switzerland. Finally, the Committee of Experts requested statistical data on collective agreements and the number of workers covered. In May 2003, when consolidated statistics were last drawn up, the data showed the following situation:

– there were some 3.9 million active persons, of whom 3.3 million were salaried or apprenticed;
– 594 collective agreements were in force, covering some 1,414,000 salaried employees, of whom 36.3 per cent were women;
– 449 collective agreements contained provisions on minimum wages, covering 1,169,000 salaried employees, of whom 39.9 per cent were women;
– 36 collective agreements were extended, covering 360,800 salaried employees, of whom 41.2 per cent were women.

Statistics broken down by size of enterprise and sector of economic activity were available on the web site of the Federal Statistics Office.

The Worker members recalled that the failures exposed by the Committee of Experts with respect to Switzerland's application of Convention No. 98 highlighted the inadequate protection against anti-union dismissals. The Committee on Freedom of Association had requested the Government to re-examine this question in order to guarantee effective protection. Concerning acts of interference, the Government had not provided any information regarding employers that attempted to divide trade unions, either by creating their own associations or by addressing themselves to staff committees. With respect to the promotion of collective bargaining, it seemed that the public authorities had not taken any measures to remedy the erosion of collective bargaining, while collective agreements covered only a third of employees. The Worker members considered this case to be of high importance because it showed the tendency of the depreciation of free and voluntary collective bargaining. Slowly but surely, Switzerland was turning from collective bargaining towards negotiations directly with the personnel.

The Employer members were of the view that only a preliminary discussion could be held on this case, as the observation of the Committee of Experts contained only allegations and no factual findings, nor the perspective of the Government and the Swiss employers. It was not appropriate to discuss the case at this stage, especially since the Government had not had the opportunity of responding and a report was due in the near future. With regard to Articles 1 and 3 of the Convention regarding dismissal due to trade union activities, they questioned the Committee of Experts' applying the principles of a Committee on Freedom of Association case to the Convention in this situation, which was narrower in scope. As regards Article 2, the Employer members did not understand why the Committee of Experts had referred to the fact that the allegations named companies, as this was not constructive. Finally, there was an assertion on voluntary collective bargaining which was so general that there was nothing concrete to comment on. They concluded by maintaining that this case had been put on the list of cases prematurely.

The Worker member of Switzerland pointed out that Switzerland enjoyed social harmony, which the trade unions and employers' associations had been ensuring for more that 60 years, despite the fact that the country had witnessed a significant increase in poverty in recent years. While tripartite social dialogue was operational, bipartite social dialogue had shown an alarming decrease as a result of the changes affecting enterprises and the labour market. Collective agreements in force in Switzerland covered 50 per cent of jobs in 1990 and only 36.7 per cent in 2003. The situation had therefore changed radically compared to the period when the Government had proposed, in its message of 24 November 1982 to the Parliament, to ratify the Collective Bargaining Convention, 1981 (No. 154). For several years, the Swiss Federation of Trade Unions (USS/SBG) had been drawing the Government's attention to the dangers the country was incurring as a result of the erosion of labour relations. On several occasions, it had launched an appeal to the Government to undertake to adopt measures to reinforce bipartite social dialogue, in accordance with Article 4 of Convention No. 98. Furthermore, the Swiss Federation of Trade Unions had pointed out in 2004 that the current practice and legislation in force were not in conformity with the provisions of Convention No. 154 and Recommendation No. 163. The decreased coverage of collective labour agreements to only 37 per cent of jobs in Switzerland was evidence of this.

It was obvious that, despite all the efforts the Swiss Federation of Trade Unions had made to draw the Government's attention to the weakness of labour relations in Switzerland, nothing had been undertaken to initiate tripartite dialogue on this matter. In response to the Committee of Experts' observations since 2002, in its reports on the application of Convention No. 98 the Government satisfied itself with referring the ILO bodies to its comments of 1 April 2004 in reply to the complaint submitted by the Swiss Federation of Trade Unions to the Committee on Freedom of Association concerning anti-union dismissals (Case No. 2265). This was contrary to article 22 of the ILO Constitution.

The Swiss Government remained inactive and unresponsive to the increasing calls from workers who, deprived of collective agreements, were subjected to the injustices which the Preamble of the ILO Constitution aimed to combat. The declining impact of collective negotiations affected both workers' and employers' organizations. The speaker regretted that the Union of Swiss Employers was insensitive to a trend that was so dangerous for social stability and cohesion. In July 2003, it had supported the Government's failure to act under the pretext that it valued the principle of contractual freedom and in particular the voluntary nature of negotiation, which implied the parties'

independence. However, according to the Swiss Federation of Trade Unions, freedom of negotiation did not imply freedom to negotiate in bad faith! Not only was it unacceptable for the law to unduly limit the parties' independence, but it was also incumbent on the law to encourage social dialogue. The weakening of labour relations in Switzerland was the result of the exclusion of trade unions by certain employers who preferred to negotiate directly with staff representatives, in violation not only of labour legislation but also of the ILO instruments which only authorized collective negotiation with representatives of the workers concerned in the absence of trade unions. The Committee of Experts and the Committee on Freedom of Association had formulated many comments and decisions in this respect. The Government had received information on a number of enterprises concerned by this phenomenon. The Swiss Federation of Trade Unions expected the Government to adopt measures to prevent the proliferation of anti-union actions, and in particular to ratify Convention No. 135.

The third observation of the Committee of Experts concerned the protection against anti-union dismissals which had been the object of a procedure before the Committee on Freedom of Association. In accordance with the recommendation adopted by the ILO Governing Body, a tripartite discussion had taken place. It had allowed the current situation to be examined, in law and in practice, with a view to adopting measures to ensure effective protection in practice. The Swiss Federation of Trade Unions had proposed the adoption of a mechanism for the previous announcement of dismissals, in accordance with Recommendation No. 143 which provided for a detailed and precise definition of the reasons justifying termination of work relations and several levels of consultation; a special recourse procedure; the reinstatement in the event of unjustified dismissal, with payment of unpaid wages and with maintenance of any acquired rights. While "Travail.Suisse", the second most representative trade union in the country, had supported this proposal, the employers' representatives were opposed to any changes in the legislation. The Swiss trade unions were not asking the State to do their work. They simply wanted it to create conditions enabling them to fully discharge their functions in accordance with the international labour legislation to which Switzerland had adhered.

The Employer member of Switzerland stated that the Government had been given until 1 September 2006 to provide an answer to the Committee of Experts' comments and he therefore was astonished that this case was discussed. In practice, Switzerland did not ratify a Convention unless its national legislation already fulfilled its requirements. The Union of Swiss Employers considered that all provisions of Convention No. 98 were perfectly applied in Switzerland. With respect to the accusations by the Swiss Federation of Trade Unions (USS/SBG) concerning the protection against anti-union dismissals, the Union of Swiss Employers fully supported the Government's reply addressed to the Committee on Freedom of Association concerning Case No. 2265, in which the Government rightly rejected the arguments put forward by USS/SBG and asked the Committee to take no further action in this matter. Besides, it was not appropriate to discuss this matter since this case was currently before the Committee on Freedom of Association. With respect to the protection against certain acts of interference and the reference made to certain enterprises, it was unacceptable to hold enterprises responsible for international obligations incumbent upon States. Thus, any discussion concerning cases of individual enterprises did not fall within the scope of the work carried out by this Committee. Finally, with respect to collective bargaining, the speaker stated that this was the concern of the social partners, and that in addition to legal provisions that permitted them to freely have recourse to collective bargaining, organizational and procedural measures existed that could, if necessary, facilitate the negotiations. Therefore, he considered that in this matter the public authorities did not need to take any particular action. Employers and workers were completely free to voluntarily negotiate in strict respect of the provisions of the Convention, and in this regard also Switzerland fully conformed to the requirement of Convention No. 98.

The Worker member of France stated that violations of the Convention were often caused by a misinterpretation of its Articles. Thus, the guarantees that stemmed from the collective bargaining were being circumvented by incitements to negotiate at the most local level possible – the level at which workers were the most exposed to pressure and might fear to unionize. At the same time, the voluntary character of collective bargaining was circumvented to justify this recalcitrance. Within the context of the increase in unemployment and job insecurity, it seemed that the condition of "necessity" in Article 4 of the Convention had been fulfilled for the Government to react. The Government's action did not constitute any interference because it sought to preserve the voluntary character of negotiation, which required, moreover, effective measures of protection for each party, and particularly the protection against anti-union dismissals. This case of Switzerland was important because, if the Government met the legitimate demands of the trade unions, it could set an example.

The Worker member of Romania observed that Switzerland experienced a decrease in the coverage of collective agreements, a fact that placed the country at the same level as that of the new member States of the European Union. Many ILO member States had ceased to actively promote collective bargaining. Even though there was general agreement about the benefits of social dialogue, trade unions faced the employers' refusal to engage in dialogue. What purpose did the right to form trade unions serve if employers were able to ignore or even suppress trade unions under the pretext of their freedom to choose whether they would negotiate or not? It was inconceivable that Convention No. 98 afforded the right not to negotiate, since the right to collective bargaining constituted one of the fundamental principles of the ILO. The refusal to engage in collective bargaining amounted to a denial of justice, which prevented trade unions from carrying out their mission, namely defending their members' interests, and led to the individualization of labour relations. In view of this, the behaviour of a country like Switzerland was of major importance and, for this reason, the Government should bring its legislation and practice on collective bargaining into conformity with Convention No. 98.

The Worker member of Pakistan noted that Switzerland was a kind host to the International Labour Conference and a model of a democratic State with social justice. The Government had stated that workers dismissed for discrimination could be reinstated under the Equality Act, and that courts could grant compensation of six months as a remedy. Nonetheless, the Swiss Federation of Trade Unions had provided examples of court decisions which, while recognizing that certain dismissals had occurred due to trade union activities, had only granted compensation of three months. The Committee on Freedom of Association had pointed to the necessity of adequate protection from unjust dismissals due to trade union activity, including the remedy of reinstatement. This principle was amply documented in the cases of the Committee on Freedom of Association and in its *Digest of decisions*. The speaker further called on the Government to respect the principles of non-interference in trade unions, especially as regarded the practice of fostering staff associations to rival established unions, and to promote a culture of mutual trust and respect in collective bargaining. He hoped that the Swiss Government would take measures to bring its laws and practice in line with these principles.

The Government representative emphasized that several speakers, especially the Worker members, had relied on the reports to which the Committee of Experts referred in their observation. However, attention should be drawn to the fact that of these three reports, the first referred to Convention No. 87, not Convention No. 98; the second to the allegations concerning Convention No. 98, which were currently considered by the Committee on Freedom of Association, as well as Convention No. 135, which Switzerland had not ratified; and the third to Convention No. 144. With regard to the case pending before the Committee on Freedom of Association, it would be premature to draw any conclusions, since it had not been closed. In the Government's opinion, the question of representativity of trade unions was not up to the Government to resolve. In addition, in Switzerland a series of mechanisms were in place, through which workers and their associations could assert their rights and make requests with a view to ensuring their representativity. If a right was denied, there was a breach of law and legal recourse was possible. As to the question of Article 4 of the Convention, it should be noted that the statement from the federal Government, which had been submitted to Parliament in the process of ratifying Convention No. 98, had been approved by the Office. In the opinion of the speaker, the only conclusion the Conference could draw was that the opinion given by the Office was not valid any more.

The Worker members concluded by emphasizing once again that the case at hand illustrated what had become a trend in many countries, namely the practice of openly or discreetly discouraging collecting bargaining. They noted that the comments of the Swiss Federation of Trade Unions dated from 2002, and that the Committee on Freedom of Association had taken position on these in 2003. Nevertheless, the Government had preferred to expound its views on other Conventions rather than on the comments of the Committee of Experts regarding fundamental questions concerning the application of Convention No. 98. The Workers requested that the conclusions delivered a clear message on the significance of collective bargaining, which was at the heart of industrial relations, and that they requested the Government to take measures to revitalize social dialogue and to reply to the observations of the Committee of Experts on the question of anti-union dismissals and acts of interference. The Government should also submit a report to the Committee of Experts on the action taken with regard to the points raised by the Committee.

The Employer members reiterated that at this procedural juncture, no concrete conclusions could be drawn, as the case concerned only assertions and no established facts. The most important point was that the Government had committed itself to provide a full report on this matter. The conclusions should only recall the principles of Convention No. 98 and note the Government's response.

The Committee noted the information provided by the Government representative and the debate that followed. The Committee observed that the pending questions referred to comments by the Swiss Federation of Trade Unions (USS/SBG) according to which: certain judicial decisions showed the inadequate nature of the existing protection against anti-union dismissals; staff associations were being created and partially financed by employers, replacing trade unions by staff committees; and the absence of initiatives by the public authorities to encourage voluntary collective negotiation procedures, thus permitting employers to set aside trade unions preferring to deal with

staff representatives. The Committee observed with regret that the Government had not yet sent its comments to the Committee of Experts on these last two questions, despite the long time that had elapsed since the receipt of the last comments in 2004.

The Committee took note of the Government's statement according to which: the Committee on Freedom of Association had examined a complaint concerning allegations of the insufficiency of protection against anti-union discrimination in an interim report and upon which no decision had been taken on the substance; the Government was preparing its reply to the Committee on Freedom of Association for its upcoming November meeting; adequate protection already existed, including recourse to the courts, against anti-union interference and it was not up to the Government to interfere in questions relating to the representative nature of workers' or employers' organizations; mechanisms and procedures existed in Switzerland to facilitate collective bargaining, but that it was essential to respect its voluntary nature and the autonomy of the bargaining partners. The Committee also noted the statistics provided by the Government in respect of the number and coverage of collective agreements.

Recalling the importance of ensuring adequate protection against anti-union discrimination and acts of interference, as well as the effective promotion of collective bargaining provided for in the Convention, the Committee noted the Government's commitment to send a report to the Committee of Experts for examination this year and requested the Government to respond fully to the comments made by the USS/SBG concerning the application of the Convention in practice. Noting that tripartite discussions had already taken place in respect of, in particular, the measures of protection against anti-union discrimination, the Committee invited the Government to pursue a meaningful dialogue with the social partners on these matters and to inform the Committee of Experts of any developments in this respect.

The Government representative took note of the Committee's conclusions and wished to make a short observation concerning the reference in the conclusions to tripartite discussion. When his Government ratified Convention No. 144, it was specified in the declaration accompanying the instrument of ratification that the procedure for consultations provided under the Convention did not replace the structure of social dialogue and collective bargaining between social partners in force in Switzerland. He also emphasized that such tripartite discussions did not replace the parliamentary and constitutional rules and procedures specifically related to the implementation of the principles of direct democracy in his country. By virtue of these principles, and notwithstanding the importance of social dialogue, workers and employers as well as their respective organizations could avail themselves of democratic parliamentary mechanisms to exercise their rights either before the Parliament (by means of interventions) or directly before the sovereign people (by means of popular initiatives, for example).

Convention No. 100: Equal Remuneration, 1951

United Kingdom (ratification: 1971). **A Government representative** provided an update on gender pay gap statistics. The gender pay gap, i.e. the difference in average hourly earnings of men and women working full time without overtime, was 13 per cent as measured. In 2004, this represented a decrease of 1.5 percentage points. Although the gap was at an all time low, the Government was committed to reducing it further and aimed to give women genuine choices in balancing work and home care responsibilities. Since 2004, the most important development had been the creation of the Women and Work Commission, set up to make recommendations on tackling the pay gap. The Commission brought together employers, trade unions and experts in a wide range of fields. The "Shaping a fair future" report, a major outcome, had been presented to the Prime Minister in February 2006 and featured recommendations. The Commission had undertaken a detailed examination of evidence on the pay gap and had agreed to 40 recommendations. It had investigated a range of causes and concluded that there was no single solution to narrowing the gap. It identified a set of solutions that addressed four key areas: (1) informed choice for schoolgirls; (2) combining family and work life; (3) combining lifelong training and learning; and (4) improving workplace practice. The recommendations ensured that action would be embedded in Government work through public service agreement targets, the operation of a Ministerial Committee and a review in 2007. Government action would build on existing policies. All 88 government departments and agencies had in fact completed equal pay reviews and produced an action plan in 2004. Departments were encouraged to monitor progress with action plans and review pay systems. These were indications that the work undertaken was producing a positive impact in reducing the pay gap.

Beyond the civil service, the Government encouraged a voluntary approach to pay reviews. Targets set aimed to have 35 per cent of large organizations completing an equal pay review by 2006. Figures from 2005 showed that 34 per cent of large organizations had completed a review and were on target for 2006. By 2008, 45 per cent of these organizations were targeted to complete an equal pay review. Meeting the target involved initiatives such as the Equal Pay Panel of Experts, led by the Trades Union Congress (TUC), and more strategic implementation of the Women and Work Commission recommendations. The initiative had shown positive results. Two large service companies had conducted or were conducting equal pay audits. The Government believed in a voluntary approach in the private sector, a view reinforced by the Women and Work Commission. The Commission had concluded that legislation was only part of the answer and believed that changing business culture and opening up more quality part-time work, were key determinants in narrowing the pay gap. The Government was carrying out a discrimination law review, which would examine the current anti-discrimination legislative framework and also the scope for simplifying the law on gender-related pay discrimination.

The Government was also committed to closing the part-time gender pay and opportunities gap. In April 2005, this gap was 41 per cent, 1.5 percentage points down from 2004. The pay gap between part-time women workers and full-time men workers was an unacceptable 40 per cent. Government initiative would help to establish more flexible working arrangements for women. A Government commissioned research project into the characteristics of the part-time gender pay gap, which also compared part-time work in the United Kingdom with the other countries, aimed to identify levers for change. Key findings of the report "The part-time penalty" were that the pay differential between women working full-time and part-time within occupations was very small, but occupational segregation of women full-time and part-time explained most of the pay penalty. Women who moved from full-time to part-time work were more likely to change employer and this was a downward move. But the report found that improving access to flexible working seemed to be the most effective way of tackling occupational segregation. The Government had taken steps to promote and enable flexible working, by introducing the right to request flexible working to all parents of children under six and of disabled children under 18. As a result, the percentage of women changing employers when they returned to work almost halved between 2002 and 2006. In addition, almost 70 per cent of the beneficiaries of the up-rating of the national minimum wage in 2004 were women. The Government was working with the social partners and other bodies to bring lasting change to the issue.

The Employer members recalled that the terms of Article 3, paragraph 3, of Convention No. 100, did not permit to conclude that different rates of remuneration corresponding to objective differences in the work performed violated the principles of the Convention. Gender discrimination in pay was an old and difficult problem, involving a broad number of issues. Furthermore, differences in pay were the result of a myriad of factors that also reflected individuals' choices and work preferences; hence non-discriminatory reasons also accounted for why women were paid differently than men. The progress made towards reducing the pay gap would be incremental, and it was important to recognize that legitimate differences in pay would always exist. As the Committee of Experts' 2005 observation did not comment upon the relevant laws, legislation was not at issue: the question, rather, turned upon which strategies to put into practice in order to most effectively address the gender pay gap. The issues with respect to part-time work were especially complicated. The same factors present in full-time work also existed for part-time work; for instance, part-time work also reflected, in part, the work choices women made based on child-rearing responsibilities, or whether or not they were the main breadwinner in the family. And although the information supplied by the Government revealed a significant wage gap between part-time female workers and full-time male workers, was this a general characteristic of all part-time and full-time work? Did the same gap exist between part-time male workers and full-time male workers? The principle of the Convention, though quite simple on paper, was quite complex in its implementation. Ensuring equal remuneration between women and men required ongoing vigilance, which the Government had amply demonstrated.

The Worker members welcomed the information provided by the Government in response to the comments of the Committee of Experts, mainly regarding future intentions. They stated that the Committee had examined the case the last time in 1988 and that the Government had regularly supplied, since then, information on measures taken to give better effect to this Convention, including initiative to reduce the gaps in earnings between men and women, which still averaged 17 per cent. They noted that in the public sector, the earnings gap between men and women was 9.8 per cent, while in the private sector it was 22.5 per cent. The same situation applied in other countries. It was worrying to note that in this area, progress was slow, if one considered that in 30 years the average earnings gap had been reduced by only 10 per cent. In addition, as the Committee of Experts had noted, it was in temporary and part-time work that the greatest differences were found (38 per cent on average). The Committee of Experts should be provided with information on measures taken to reduce the earnings gap in sectors that showed the most unacceptable proportions.

The Worker member of the United Kingdom said that women in the United Kingdom had believed that the passing of the Equal Pay Act in 1970 and the ratification by the United Kingdom of Convention No. 100 would mark the end of their struggle. But, currently, the average hourly earnings of women working full time was 17.1 per cent less

than that of men. The average hourly earnings of women working part time were currently 38 per cent less than those of men working full time. Part-time work in the United Kingdom tended to be concentrated on particular grades and sectors which were proportionally paid much lower than full-time work. Forty-two per cent of women worked part time as opposed to 9 per cent of men, and men were concentrated in high-wage employment. The introduction of the national minimum wage was a welcome protection for low-paid workers. Pay inequality was discrimination under the Sex Discrimination Act. Her own trade union, UNISON, had 1.3 million members of whom 1 million were women. Many were in the public sector and low paid. But research showed that women spent their money on food, their children and household items and therefore paying them better would be better for the economy. It would also help avoid child poverty, increase the workforce, make it healthier and help make more taxes available for pensioners. Legislation was not enough. What the Trades Union Congress wanted in relation to Convention No. 100 was: mandatory pay reviews in all sectors, both public and private; transparency and tripartism in all future government commissions on women and pay; and for the Government to fully comply with the Convention in partnership with the social partners as the first step in dealing with child poverty and poverty among women.

The Worker member of Norway noted that the gender pay gap was a significant problem throughout the world, including Europe and the Nordic countries – a fact confirmed by the Director-General's Report to the Conference. The information supplied by the Government revealed that women's wages were still looked upon as supplementary to those of their husbands; this assumption was one reason for the persistence of the gender pay gap. Although the importance of women's work had been widely hailed, the statistical data showed that occupational segregation persisted, and that women continued to earn less than men for work of equal value. The Government had taken measures to realise the principle of equal pay, but further steps were required. It was the Government's solemn responsibility to take the necessary action, including legislative action, to reduce the gap in pay. The United Kingdom's Equal Opportunities Commission concluded that the Equal Pay Act had reached the limits of its usefulness, and radical new action was required. In this regard, it would be of great importance if the laws were amended to allow unions to bring equal pay claims on behalf of groups of women. Finally, the Government should take stronger measures to address the gender pay gap in the private sector.

The Employer member of the United Kingdom declared that the Confederation of British Industries (CBI) wished to highlight the fact that Convention No. 100 was a promotional Convention, ratified by the United Kingdom in 1971. He said that the case concerned equality of opportunity and treatment, and that Article 2 required the promotion and application to all workers of the principle of equal remuneration for men and women workers for work of equal value. He stressed that real progress had been made in reducing the gender pay gap in his country, and that imposing equal pay reviews was not the answer to gender pay problem. Requiring all employers to undertake equal pay reviews would be too onerous and at odds with Convention No. 100. In 2005, the Employment Trends Survey indicated that 25 per cent of all employers conducted an equal pay review compared to 19 per cent in 2004. Of the larger companies, 40 per cent had conducted an equal pay review with a further 17 per cent planning to do so in 2006, exceeding the government target. Referring to Article 3, paragraph 1, of the Convention, he said that it was clear that measures existed to promote the objective appraisal of jobs on the basis of work performed. The 2004 research carried out by the Equal Opportunities Commission's (EOC) showed that the percentage of employers who had designed their own review process had increased from 39 per cent to 75 per cent between 2002 and 2003, while the proportion using the EOC's own toolkit had nearly halved over the same period. The issue of the gender pay gap had been fully examined at national level by the Women and Work Commission, whose report did not find that employer discrimination was a cause behind the pay gap but that gender stereotyping and career choices in the education system were the most likely to have a negative effect on the gender pay gap.

The employers in the United Kingdom did not believe that the Equal Pay Act was at the limit of its usefulness or that radical new action was required. Women were protected from the injustice of unequal pay by several legal instruments and mechanisms. Free advice and assistance was also available from the Citizens Advice Bureau and free representation from bodies such as the Employment Lawyers' Association. If a woman succeeded in an equal pay claim before the Employment Tribunal, she was entitled to an award of a pay rise to the level of her male counterpart, identical beneficial terms, and compensation of up to six years' arrears of pay. The Sex Discrimination Act 1975 also protected employees from victimization for making a complaint about equal pay and there was no financial cap on the amount of a compensatory award under this Act. There were also 15 separate pieces of legislation and codes of practice that could be used in claims relating to pay discrimination. The speaker indicated that imposition of a duty on employers to promote gender equality and eliminate sex discrimination was not required as it was not a proactive measure and not a requirement of the Convention. It would also be contrary to the holistic approach to equality and diversity promoted by the Government. The employers in the United Kingdom had already embraced new ways of working. CBI research showed that 90 per cent of employers were now offering a range of flexible working patterns and the country had one of the highest rates of female participation (70 per cent) in the European Union. In 1990, only 8 per cent of managers were women but by 2003, that figure had risen to nearly 33 per cent.

The Government representative thanked speakers for their comments and concluded with three points: (1) in the 30 years since the Equal Pay Act had been passed, the gender pay gap had been reduced from 30 per cent to 17 per cent; (2) the Government had implemented policies for both the public and private sectors; and (3) the best way forward was through promotion of best practices.

The Employer members noted that the Government was making serious efforts on a complex problem that was not easy to solve.

The Worker members observed that the application of Convention No. 100 – a fundamental Convention that was promotional in nature – undoubtedly continue to pose significant problems in our societies, even though the principle of equal remuneration enjoyed widespread acceptance. As the Worker member of the United Kingdom explained, disparities in pay bore profound consequences for family life, professional life, and children's education and well-being. In fact, in most cases, flexibility was required principally on the part of women workers. The differences were less marked, of course, in those areas where public authorities had the means to intervene directly, as in the public sector. In the private sector, however, where the most egregious gaps in pay persisted, it was important for the Government, in concert with the social partners, to enact stronger measures to apply the Convention Given the scale of the problem, the numerous studies carried out in this area, and also the susidiarity principle which influenced EU policy planning, it was advisable that the Committee of Experts undertook an in-depth analysis of these issues.

The Committee noted the Government's statement and the ensuing discussion. It noted the concerns expressed by the Committee of Experts regarding the slow progress in reducing the pay gap between men and women in the private and public sectors, despite the fact that equal pay legislation had been in force since 1975. According to the information examined by the Committee of Experts, the gender pay gap was particularly high in the private sector.

The Committee noted the comprehensive information presented by the Government outlining the numerous and continued measures taken or envisaged with a view to reducing the gender pay gap in the private and public sectors. The Committee noted, in particular, the establishment of the Women and Work Commission which had delivered its report in February 2006. This report contained a set of recommendations to further reduce the gender pay gap, including through addressing gender stereotypes in education and work choice, occupational segregation by gender, measures to reconcile work and family responsibilities, and improving workplace practices and attitudes. With respect to the public sector, an Equal Pay Action Plan was being implemented. In the private sector, a target had been set for increasing equal pay reviews. Further, the Committee noted the Government's indication of the ongoing review of the sex discrimination and equal pay legislation and its determination to reduce the part-time pay gap.

The Committee took note of the debate that had enlightened, amongst other elements, the direct consequences of the gender pay gap on the living conditions of women workers, on their family life and especially on the worrying phenomenon of child poverty.

However, the Committee noted that different views had been expressed concerning the effectiveness of the measures taken so far in reducing the gender pay gap. While the Committee acknowledged that the implementation in practice of this fundamental Convention was complex and would have to be achieved over time, it also emphasized that effective measures needed to be taken in order to accomplish real progress in attaining the Convention's objective of equal remuneration for men and women for work of equal value.

The Committee therefore encouraged the Government to intensify its dialogue with the social partners on equal remuneration issues, including on taking more proactive measures to address the remaining gender pay differentials, particularly in the private sector.

Special attention should thereby be given to the temporary and part-time work sector, both for the importance of the gender pay gap and for the concentration of women in those sectors.

The Committee requested the Government to provide the information presented orally to the Committee of Experts in writing, as well as the information requested by the Committee of Experts. In this regard, the Government was also requested to report on the impact of the existing legislation, policies and programmes on the elimination of pay differentials between men and women resulting from direct or indirect discriminatory practices, contrary to the Convention.

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

Islamic Republic of Iran (ratification: 1964). **A Government**

representative stated that the population explosion of the early 1980s affected unemployment of both sexes. According to the latest figures released by Iran's Centre for Statistics, women's participation levels in universities stood at 65 per cent of university students, and women's unemployment rate was expected to decrease from 21.3 per cent in the year 2004 to 9.3 per cent by the end of 2009. The participation rate of women in employment in the meantime would increase from 12.94 per cent to 16.20 per cent. The Government hoped to fulfil its plan to curb women's unemployment through awareness raising and entrepreneurship courses for women. The latest figures on the economically active population in 2005 in different sectors of the economy showed 27.4 per cent of economically active women were employed in the industrial sector as compared to 29.8 per cent for men. In the services sector the rates stood at 33.3 per cent versus 45.2 per cent, respectively. Article 6 of the Women Employment Policies adopted in 1992 paved the way for appointing qualified and educated women to senior managerial and decision-making positions so as to redress previous imbalances at higher administrative levels. The prevailing imbalance in vertical and horizontal occupational opportunities and inequalities with respect to promotion and decision-making and management positions was being gradually redressed. The speaker stated that his country looked forward to ILO technical assistance on Women's entrepreneurship workshops to be held in July 2006 in Shiraz and Tehran that aimed at improving vocational training and employment of women in non-traditional skills and promoting women's entrepreneurship. In order to break away from traditional skills, many young women were presently attending vocational and technical courses. Furthermore, over the last seven years, the Police Department had been recruiting more than ten thousand women officers and office staff.

Regarding the Committee of Experts' comment on the High-level Tripartite National Women's Conference, he affirmed that his Government would submit the draft of the National Strategy for Promoting Women's Empowerment and Equality together with other reports regarding the social situation of women. In respect of eliminating discrimination against women in the labour market and in promoting equality of opportunity, the speaker noted that the Fourth Five-year Development Plan required the Government to further strengthen the role of women in society and promote their participation in the economy. The plan further called for strengthening women's skills in line with the needs of the labour market and technological development, identification and promotion of investment in job-generating sectors, and improving the quality of life for women and raising awareness on women's rights and gender issues.

As regarded the Committee of Experts' comments on the progress made in vocational training, education and non-traditional skills for women and young girls, the speaker pointed out that in 2005, around 160,000 women attended a variety of different technical courses. Women also comprised 73 per cent of the trainees in the non-government technical and vocational training centres in the same year. Women now comprised 34.01 per cent of the total government staff.

Turning to the question of section 1117 of the Civil Code under which a husband could bring a court action against his wife taking up a profession or job contrary to his wife's prestige, the Government representative stated that the Government would make every effort to amend the provision and would advise the Committee of any development in this respect in its next report. With respect to article 2 of the Bill proposed by the Judiciary to Parliament under which a female judge could issue verdicts provided that she was married and had more than six years of experience, the speaker informed the Committee that the existing legislation imposed the same requirements for the appointment of male judges as well.

Regarding the issue of compulsory dress code, he indicated that the Disciplinary Rules for University and Higher Education Institutes did not treat non-observance of dress code as a political and moral offence, and did not impose sanctions such as dismissal or permanent exclusion from universities as mentioned in the Committee of Experts' report. Moreover, observance of dress code was a practice on which there was consensus in the population.

With respect to the consultative revision process to ensure protection in law against discrimination in employment and occupation on the grounds of religion, he pointed to the Fourth Five-year Development Plan whose article 120 called for the formation of a council for policy dealing with recognized religious minorities affairs. He also mentioned the newly established High Commission on Human Rights which addressed among other things the violation of the rights of religious minorities. With regard to religious diversity in his country, the speaker stressed that persons of different religions held jobs in the government. Details on the number of persons from religious minorities receiving financial incentive through the employment-generation projects could not be supplied, as people were not asked to state their religion to benefit from these programmes.

In response to the concern expressed by the Committee of Experts on the employment of Baha'i, he pointed to the Fourth Five-year Development Plan which emphasized the promotion of equal civil rights. He further maintained that there were no restrictions for Baha'i in higher education or access to the labour market. Regarding the employment situation of ethnic minority groups, he recalled that the Constitution and the State Employment Act prohibited discrimination. There was presently a rainbow of ethnic minorities in the government and military. The Islamic Commission on Human Rights dealt with individual labour-related cases, including employment discrimination.

In conclusion, the speaker reiterated his Government's firm determination to continue dialogue and cooperation with the ILO in order to devise a common approach to dealing with the Committee of Experts' concern regarding employment discrimination.

The Employer members thanked the Government representative for the information he had provided but expressed their disappointment that this had not been supplied earlier to the Committee of Experts. They recalled that the protection afforded by Convention No. 111 applied not only to persons who had employment but expressly extended to possibilities of gaining employment and training. With regard to discrimination on the grounds of gender, the Employer members noted that the level of women's participation in the labour market remained low, and that the unemployment rate for women was twice as high as that for men, and rising. The low participation rate (2.5 per cent) of women in high-ranking positions was not acceptable. They noted that this case had been on the Committee's list previously, and it seemed that the Government's reports in the past had been more detailed and indicative of efforts to reduce discrimination. This was not the case of the report submitted this year. Little was known about what had happened in recent years in this case or if any of the positive measures mentioned in previous reports had come into effect. What was known was that the dress code for women and the imposition of sanctions in accordance with the Act on administrative infringements for violations of the code had in practice a negative impact on women's employment. The Employer members stressed that they were not against women dressing in a traditional manner, but opposed the fact that this was compulsory for women who wanted to work in the public sector. They also noted that section 1117 of the Civil Code was still in force, and that the Government had indicated it would change this rule. Furthermore, they expressed their opposition to Decree No. 55080 of 1979 on female judges, noting that it reduced women judges from a judicial to an administrative status and restricted them to hearing "female" cases. The Employer members noted that religious discrimination was a risk where one religion was established as the state religion. They noted with interest that the Government intended to revise the law regarding religious minorities' rights, and hoped that it would initiate a consultative revision process to ensure protection from religious discrimination. The ILO should be kept informed and the Government should provide information on the mandate and functions of the National Committee on the Protection of the Rights of Religious Minorities. They also observed that the situation of the Baha'i had not improved. They asked the Government to provide statistics on their situation. In conclusion, the Employers asked the Government to abolish laws that conflicted with Convention No. 111 and to develop legislation concerning non-discrimination.

The Worker members thanked the Government representative for his statement. However, they warned that those who were not familiar with the case and with the comments of the Committee of Experts over the years, and who had only read this year's report and listened to the statement by the Government representative, might have gained the mistaken impression that this very serious case was only confined to certain shortcomings, particularly with regard to the education, vocational training and employment of women, as well as a few difficulties relating to religious minorities, some of which were not recognized, and ethnic minorities. Without wishing to go too far into the past, the Worker members believed that it was however necessary to refer to certain events, with particular reference to a massacre that had occurred over 20 years ago when some 200 Baha'i had been executed, when there had been reports of terrible cases of discrimination, persecution and harassment. Although, as indicated by the Government representative, many of the Baha'i might well had been jewellers, goldsmiths and dairy producers at that time as they were today, in that period they had all been labelled as American spies. While the Baha'i were a non-recognized religious minority, even recognized minorities, such as the Jews, had also suffered terribly some years ago, as attested by United Nations bodies. The Worker members, recalling that the Government had for many years adopted a hostile and threatening tone when discussing this case, expressed gratitude at its more open attitude in more recent years. Nevertheless, upon closer examination, and despite the by and large positive picture painted by the Government representative, the positive aspects to which he had referred were not at all in balance with the issues raised by the Committee of Experts. On the positive side, the Government representative had described in detail a series of programmes, projects, courses and meetings. Appreciation should therefore be expressed of what had been done, particularly in relation to the education, vocational training and employment of women. While these measures were all of great importance in order to promote a more favourable climate, they tended to obscure the fact that very little had been done in other and more crucial areas, including the amendment of the legislation, as called for by the Committee of Experts. Moreover, many serious problems also remained in practice. Although there were many more women who were educated than in the past, jobs were not always available for them. Clearly, it was a difficult situation when there was a large reservoir of well-educated women who could not find work.

Certain long-standing issues still needed to be addressed. Under section 1117 of the Civil Code, a husband could still bring a court

action to object to his wife taking up a specific profession or job. Even though the Protection of the Family Act of 1975 gave similar rights to women in this respect with regard to their husbands, this meant that there was a discrepancy between these provisions that was confusing but which would be relatively easy to rectify. The Government had stated on many occasions that it wanted to achieve progress. The question therefore arose as to why issues like this remained unsolved. The same applied in relation to the dress code. A reference had been made to draft legislation being submitted to Parliament, but there had been no further news. The situation was the same with the Bill proposed to Parliament by the judiciary concerning female judges. The fact that no action had been taken on a whole series of issues raised by the Committee of Experts for many years undermined the credibility of the Government's claims and promises. The Worker members therefore called upon the Government to take the ILO supervisory bodies seriously and finally to take firm action. Moreover, it should provide the statistics requested by the Committee of Experts so that the situation could be assessed objectively. With regard to the rights of the non-recognized religious minorities, and particularly the Baha'i, and ethnic minorities, although on the basis of the statement by the Government representative and the reports of the Committee of Experts nothing appeared to have changed to the negative, reports from other sources suggested that their situation might well be deteriorating. Citing articles in the international press, the Worker members noted reports that Government newspapers had published articles denouncing persons of the Baha'i faith and accusing them of barbarous practices, mass arrests and detentions, etc. Such reports were in stark contrast to the description of the general attitude in the Islamic Republic of Iran vis-à-vis the Baha'i given by the Government representative and raised the question as to what the situation really was in practice. The Worker members further noted comments by the Special Rapporteur of the United Nations Commission on Human Rights expressing concern about the treatment of minorities in the country. Explanations were therefore needed to account for the discrepancies between these various statements. There was a real danger that the existence of stereotyped attitudes for which in many cases the Government itself was fully responsible, was preventing progress in improving law and practice in the country. The Government should spend intensive attention and take determined action here. Moreover, the Worker members were gaining the general impression that, while the Government had shown a certain willingness to take action in the past, as illustrated by many activities including various draft legislative texts that had been formulated, it had now run out off steam and no further progress was being made. They therefore called on the Government to make a renewed effort to fulfil the promises that had been made in the past. As the issues had been discussed for many years, it was necessary to achieve progress rapidly. They therefore proposed that the Government should make a commitment to fulfilling the recommendations of the Committee of Experts by 2010. Its next report to the Committee of Experts could therefore take the form of an interim report on the progress achieved towards this end.

The Government member of Cuba stated that she appreciated the efforts made by the Government and its positive initiatives to improve women's access to education, training and employment, in particular the incorporation of the National Strategy for Promoting Women's Employment, Empowerment and Equality into the Socio-Economic and Cultural Development Plan, which the Committee of Experts had noted with satisfaction in paragraph 2 of its observation. The observation of the Committee of Experts also noted a 65 per cent participation rate for women in the field of education and vocational training in universities, a rate that was increasing rapidly, which showed that the measures adopted were producing positive results. With the willingness expressed by the Government to accept ILO technical assistance, further progress would gradually be achieved in other areas where action had been taken, including in relation to ethnic and religious minorities and in the legislative reforms the Government had considered submitting to Parliament. The Government had also provided considerable data which showed that the participation rate of women in the various government bodies had increased. The speaker added that, where ancestral rules and traditions played an important role in social organization, laws and administrative measures did not achieve immediate results unless they were combined with the dissemination of positive experiences and public awareness, as a more effective way of achieving the objectives. She therefore thanked the Government representative once again for the efforts to promote social equality and said that, in her view, the first criterion in the Conference Committee's conclusions should be to express support for the measures taken to gradually achieve the desired results.

The Worker member of Pakistan stated that the Islamic Republic of Iran was an important country in Asia and the next brotherly nation of Pakistan. It had ratified the fundamental ILO Convention No. 111 and the Committee of Experts had made concrete recommendations to eliminate discrimination in practice with respect to gender and ethnic minorities. It had asked the Government to provide further information on the measures taken to improve the situation in law and practice. He supported the call made by the Worker members to the Government to remedy the situation, as urged by the Committee of Experts in paragraphs 1 to 12 of its observation. He had also listened with interest to the Government representative who had reported some positive developments such as the holding of a national conference in collaboration with the ILO, which had adopted a National Strategy for Promoting Women's Employment, Empowerment and Equality into the Socio-Economic and Cultural Development Plan. Paragraphs 2, 4 and 12 of the Committee of Experts' observation had also noted the efforts made in relation to the access of women to employment and vocational training and the positive action the Government had taken in the past to promote equality in employment and occupation. However, the Committee of Experts had also requested that the Government made further efforts to implement the recommendations that had been made to and to provide up-to-date information on the concrete results achieved, as requested in paragraphs 2 to 8 of the observation. With respect to ethnic minorities, the Government was urged to bring the law and practice into conformity with the Convention and to implement the recommendations made by the Committee of Experts. He urged the Government to implement the measures that it presented to this Committee in conformity with the Convention, and in the wider interest of progress and the well-being of the Iranian society.

The Government member of Pakistan indicated that he had taken careful note of the statement made by the Government representative on the measures taken to address the points raised in the Committee of Experts' observation. He had also listened carefully to the remarks of the two social partners. He expressed the view that, in drawing up its conclusions, the Conference Committee could take into consideration the significant achievements of the Government of the Islamic Republic of Iran in ensuring adequate gender representation in many spheres of life. Moreover, the Government had submitted many draft laws, which were before Parliament. He added that women were not only actively engaged in the economic and social fields, but were also well represented in the Iranian Parliament and in the different branches of the Government. The presence of a significant number of Iranian women delegates to the present session of the International Labour Conference was a further indication of the desire to ensure proper gender representation. He reiterated his belief that the Government was making earnest efforts to overcome the problems raised in the observation of the Committee of Experts, through a consultative process which involved all the social partners. All of these elements of progress should be taken into account by the Committee.

The Government member of Bangladesh stated that the local circumstances and the reality in the Islamic Republic of Iran should be taken fully into consideration when discussing the case. He noted the commendable success made by the Government in improving the role of women in employment and occupation. Moreover, the Government had provided disaggregated statistics on women's education, employment, training and participation in information and communication technology, in line with the observation of the Committee of Experts. Taking into consideration the dialogue between the Government and the ILO, impressive progress had been made. He was therefore of the view that the Conference Committee should express its appreciation of these developments, and reiterated that, in light of the above information, the Islamic Republic of Iran should be given adequate time to achieve full compliance with the Convention.

The Government representative thanked the various speakers, including those Government members who had recognized the earnest efforts that were being made by his Government to promote the implementation of international labour standards. He called on the Committee to focus on the future, setting aside the past, and to engage in an open and constructive dialogue focusing on commonalities rather than what could divide the members. He expressed the view that the issue on the Baha'i faith was not a matter of discrimination, but of distinction. Furthermore, he regarded the unexpected discussion of the case as an opportunity to provide information on what was being achieved in his country. The Government was ready to provide the additional information requested by the Committee of Experts, including the measures taken or envisaged in this regard, along with information on the issues concerning women. Certain members of the Committee had given the impression in their statements that the situation was problematic for all religious and ethnic minorities, but he expressed the view that issues relating to religious and ethnic minorities had not been, were not and would not be a problem in his country. Concerning section 1117 of the Civil Code, which permitted a husband to bring a case to court if he objected to his wife taking a job contrary to the interest of the family or to his wife's prestige, he indicated that in practice it was extremely seldom that complaints were filed with the courts on the issue. He also stated that the judiciary would be very strict on this matter and indicated the Government's readiness to provide information on cases in which courts had rejected men's appeals in this regard. With regard to women's employment, he stated that it was indeed a matter of great concern, with particular reference to the higher unemployment rate amongst women than men. He added that the employment situation was aggravated by the fact that there were currently 2,700,000 migrant workers in the country and that the population was doubling every 20 years. Although everything possible was being done, this was a situation that would give rise to difficulties for any country. To address this issue, the Government was assisting in the voluntary expatriation of such migrant workers in collaboration with concerned agencies, such as the UNHCR. This expatriation was

carried out in a friendly and peaceful manner and in accordance with humanitarian principles. In relation to the situation of women, he indicated that there were many women in universities. The percentage of women in different faculties of universities was as follows: 56 per cent in humanities; 70 per cent in sciences; 33.2 per cent in agriculture; 71.5 per cent in medical sciences; and 69 per cent in the arts. His country was therefore doing its best to improve the situation of women, particularly by improving their vocational skills. These facts were a token of the solidarity among the peoples in the country. The Islamic Republic of Iran was like a Persian carpet, comprising different elements woven together with a common thread. He concluded by expressing his Government's firm determination to make every effort to bring its legislation into conformity with ILO Conventions, fully in line with the demand of the Worker members that this should be done before the year 2010.

The Employer members thanked the Government representative for the additional information provided and recalled that the case had been discussed by the Committee for more than 20 years. While the tone of the statements by the Government representative was positive, the actual improvements were very slow. The Committee of Experts had requested the Government to supply more specific information, but such information had not been provided and no indication had been given as to when it would be communicated. They therefore urged the Government to supply specific information, including the necessary statistics as soon as possible. They recalled that the employment rate of women was still very low and their unemployment rate was twice as high as that of men. The Government did not recognize that all women might not wish to follow a dress code that was laid down by the law. Moreover, even if that legal provision was not applied, the very fact that it existed had a huge symbolic effect. They therefore urged the Government to resolve these substantive issues in law and practice. They added that they hoped to see changes immediately, because discrimination had been ongoing for many years and there could no longer be any excuses.

The Worker members observed that, while metaphors were very useful, they could hide meaning as well, just as beautifully woven cloth could be used to conceal the facts and a rock could be a credible symbol of immobility. The principal aspect of the present case was that it was necessary to establish priorities for cooperation so that real progress could be made as soon as possible. In that respect, the reply by the Government representative had contained an interesting comment on a matter raised by the Committee of Experts. The Government representative had explained that, with regard to section 1117 of the Civil Code, which allowed a husband to take court action to prevent his wife from taking up a profession or job, there were very few cases of its implementation in practice. This statement was deceptive, as the very existence of such a provision was a violation of the Convention. The same applied to what had been said about the dress code. Although the Government representative had indicated that there were no sanctions for violations of the dress code, the mere fact that such a provision was contained in the legislation was in contravention of the Convention. Such provisions should therefore be removed from the legislation, so that the relevant legal provisions were consistent, clear and in conformity with the Convention. In view of the commitment expressed by the Government representative to spare no effort to bring the relevant laws into line with the Convention, the Worker members called on the Government to ensure that the next report to be submitted to the Committee of Experts, which could be examined by the Conference Committee in 2008, took the form of an interim report on the progress that had been made in parliament as regarded concrete changes in law and practice. Furthermore, with regard to the matters raised by the Committee of Experts, on which the Government representative had not provided replies, they called on the Government to respond in writing to the Committee of Experts. They hoped that the conclusions of the Conference Committee would recognize the positive steps taken by the Government to create the appropriate conditions to address the problems under discussion, particularly those related to gender issues. While recognizing and welcoming such action, the conclusions should stress the important measures that still needed to be taken to bring the law and practice in the country fully into line with the Convention in relation to all the aspects raised by the Committee of Experts. The conclusions should also note the serious problems affecting certain minorities, with particular reference to the non-recognized religious minorities, such as the Baha'i. The conclusions should also urge the Government to take action to address urgently the problem of stereotyped attitudes, which were at the root of many of the problems under discussion.

The Committee noted the statement of the Government representative and the ensuing discussion. The Committee noted the information and statistics provided by the Government, particularly concerning the participation of women in employment, higher education and vocational training, and its expression of commitment to eliminate discrimination against women. The Committee recognized the measures that had been taken to create conditions to increase women's participation in the labour market. However, the Committee expressed serious concern that a number of issues that it had been raising for many years remained unresolved.

The Committee regretted to note that no progress had been made in amending or repealing legislation that was contrary to the Convention. It urged the Government to ensure that the laws and regulations restricting women's employment, including regarding the role of female judges, the obligatory dress code, the right of a husband to object to his wife taking up a profession or job, and the application of social security legislation regarding women, would be brought into conformity with the Convention without delay. The Committee also expressed continued concern regarding discrimination against members of recognized and unrecognized religious minorities and ethnic minorities. The Committee noted that discrimination against Baha'i remained particularly serious. The Committee stressed the need for the Government to take decisive action to combat stereotypical attitudes underlying discriminatory practices.

The Committee recalled the need to demonstrate that statements of commitment were translated into concrete action and results. The Committee urged the Government to take the necessary measures to bring its law and practice fully into conformity with the Convention. It also requested the Government to provide detailed information, including statistics disaggregated by sex, in its next report to the Committee of Experts on concrete steps taken and results achieved. The Committee noted the Government's commitment to constructive dialogue and to intensifying its cooperation with the ILO. It welcomed the firm commitment given by the Government to take all appropriate measures, and in particular to bring all its relevant legislation and practice into line with the Convention by no later than 2010. The Committee requested the Government to provide a mid-term assessment of these steps in its next report. The Committee further requested that resulting technical assistance address all the pending issues concerning the application of the Convention.

Mexico (ratification: 1961). **A Government representative** emphasized that the Government was firmly committed to the goal of eradicating all forms of discrimination. He appreciated that the Committee of Experts had noted with interest in its report the policies and legislation adopted in Mexico to prevent discrimination and promote equality of opportunity and treatment in the workplace. This recognition by the Committee of Experts encouraged the Government of Mexico to strengthen and effectively apply measures already in place. He recalled that Mexico had a legislative framework that prohibited discrimination and promoted gender equality, including first and foremost the Mexican Constitution, the Federal Labour Act, the Federal Act to prevent and eliminate discrimination, the Regulation respecting employment agencies and the Regulation respecting vacancy announcements in the Federal District. There also were bodies responsible for monitoring compliance with discrimination legislation and dealing with matters relating to gender equality, including the National Council for the Prevention of Discrimination, the sectoral body of the Secretariat of Governance, the National Institute for Women, the Office of the Federal Attorney-General for Labour Protection, the decentralized body of the Secretariat of Labour and Social Insurance, as well as the General Directorate for Gender Equality and the Federal Labour Delegations assigned to the secretariat.

He noted in particular that the National Council for the Prevention of Discrimination was competent for the submission and resolution of complaints and representations for alleged acts of discrimination committed by individuals or federal authorities in the exercise of their functions, either through a conciliatory process between the complainant and the defendant or by advising the complainant on possible alternatives. The National Institute for Women was responsible for promoting and encouraging conditions conducive to non-discrimination, equality of opportunity and treatment between men and women, the full exercise of all women's rights and their equal participation in the political, cultural, economic and social life of the country. The Office of the Federal Attorney General for Labour Protection was responsible for providing guidance and advice free-of-charge to workers, their unions or beneficiaries, on the rights and obligations relating to labour and social insurance and social security law, as well as on the legal and administrative procedures and the competent bodies to which they could turn to exercise those rights. The General Directorate on Gender Equality of the Secretariat of Labour, in collaboration with the Federal Delegations of Labour, was responsible for directing and coordinating the formulation, integration, implementation and follow-up of policies and programmes to ensure equality of employment opportunities and prevent discrimination in the sectors of the population requiring special attention.

With regard to the request of the Committee of Experts to strengthen the Mexican legislation so as to explicitly prohibit discrimination on the basis of sex and maternity in relation to recruitment, hiring for employment and conditions of employment, he said that his Government was engaged in a series of reforms of the Federal Labour Act in which it was envisaging explicitly prohibiting the requirement of a negative pregnancy test as a condition to obtain and keep a job. Among the initiatives proposed by the Mexican Congress, he emphasized the proposal to amend sections 4, 5, 133 and 164, and to add section 164A to the Federal Labour Act so as to: prohibit the dismissal of women on grounds of maternity, pregnancy or breast-feeding; prevent

wage discrimination; and eliminate all forms of labour discrimination. The matter was before the Labour Social Insurance and the Equality and Gender Commissions of the Chamber of Deputies pending approval. The social partners had participated in the formulation of the texts communicated to the Deputies; furthermore, there was a smooth and totally unrestrained dialogue between employers' and workers' organizations and the Deputies. The Senate and the House of Representatives of the Federal District had reached agreement to explicitly call for the prevention of discrimination on the basis of pregnancy. Alongside the legislative debates, with a view to eliminating labour discrimination on the basis of gender and maternity, the Government of Mexico was continuing to promote measures to ensure respect for the dignity of women under any conditions. With regard to the request by the Committee of Experts for information on the investigations carried out into discriminatory practices in maquiladora enterprises, he mentioned several bodies through which women workers could make complaints and seek information. These were the INMUJERES web site of the General Directorate of Gender and Equality of the Secretariat of Labour and the Office of the Federal Attorney-General for Labour Protection, which provided information on pro-equality programmes and projects, a life without violence, gender mainstreaming and models of gender equality. He added that in 2005 this web site had received 1,853 requests for information, 1,698 of which were from women and 155 from men. Of these, 46 had referred to discrimination on the basis of gender and 26 to termination of employment on grounds of pregnancy.

Between 1 July 2004 and 15 May 2006, the National Council for the Prevention of Discrimination had received complaints concerning 21 cases of dismissal from employment and discrimination on the basis of pregnancy through the complaint procedure envisaged in the Federal Act to prevent and eliminate discrimination. Some of these complaints were made to the competent labour authorities because the parties concerned had not been able to reach a settlement. Between 2002 and 2005, the Office of the Federal Attorney-General for Labour Protection had provided legal advice free-of-charge, conciliation in labour disputes and legal representation for 140,470 women. Between 1 January 2005 and 31 March 2006, the Directorate of Inspection of the Secretariat of Labour, which ensured that workers' rights were not violated in the workplace at the federal level, had carried out 28,280 inspections of general working conditions throughout the country. He also emphasized that his Government's policy focused on preventive measures. This preventive policy was embodied in the Federal Act to prevent and eliminate discrimination of June 2003, which covered all the workers in Mexico, including those working in maquiladora enterprises.

In response to the request from the Committee of Experts for information on the results of the Agreement for concerted action between the National Council of the Maquiladora Industry and the Secretariat of Labour in April 2002, he said that, as a result of the signing of the Agreement, the Sub-Secretary for Human Development and Productive Labour, together with the Federal Labour Delegations of the border states, had provided training on labour rights for 462,000 women in the maquiladora industry. They had also carried out awareness-raising campaigns for executives of maquiladora enterprises on gender equality. Furthermore, he referred to the activities of the More and Better Jobs for Women project, which the Government was undertaking with the ILO, which had been initiated some years ago in the states of Guerrero and Coahuila and was currently being implemented in the states of Chihuahua and Yucatán, through comprehensive capacity-building for women workers in the maquiladora enterprises to inform them of their labour rights and strengthen their ability to negotiate with the enterprises employing them. At the federal level, the Secretariat of Labour was carrying out a permanent campaign to promote dignified working conditions for women and to eliminate the requirement for a negative pregnancy test, a campaign that had begun with the distribution of posters in the services and institutions of the Federal Public Administration throughout the country. Moreover, they were also supporting networks, an initiative of the Secretariat of Labour, which included all three levels of government, federal, state and municipal, with the participation of civil society, and were already operational in 22 states. These networks promoted awareness campaigns for women workers in enterprises on their rights in the event of dismissal on grounds of pregnancy, inter alia. He added that in 2005 some 94,000 charts on women's rights and obligations had been distributed in another campaign entitled "Let's Move towards Just Laws"; 13,000 posters were also distributed on the non-requirement of pregnancy tests and equality of opportunity.

With regard to the request by the Committee of Experts that the Government continue to provide information on the activities of the National Institute for Women, he indicated that the Institute continued to carry out campaigns with employers, unions, institutions and civil society organizations to promote the non-requirement of a pregnancy test as a precondition for obtaining or keeping a job. Furthermore, in the context of the activities to implement the goals of the Equality Programme of the National Institute for Women, one of the strategies developed by the Institute in 2005 was awareness-raising and training on gender mainstreaming for 6,000 public servants at three levels of government, as well as for the staff of private enterprises and the general public. The Institute was also promoting concrete action to encourage gender equality in the workplace through an instrument called the "Gender Equality Model". This model called upon organizations to establish written guidelines for promoting equality of opportunity for men and women with equal levels of education, experience, training and responsibility, and to prohibit the requirement of pregnancy tests when hiring women; this Mexican initiative was recognized by international organizations and had been adopted by various countries of the Americas. Between 2003 and 2005, a total of 60 public, private and civil society organizations had obtained the "Gender Equality Model" award, which had directly benefited 83,000 women. In the present year, 20 public and 18 private organizations, as well as one civil society organization at the national level had initiated the process to obtain this award. He indicated that the measures implemented by the National Institute for Women were beginning to bear fruit. He reiterated his Government's commitment to continue providing information on the Institute's activities, to send its annual report and the results of its programme in maquiladora enterprises in its next report on Convention No. 111. Finally, on the issue of whether vacancy announcements were prohibited which established specific profiles of candidates on the basis of skin colour, he answered that they had been prohibited. The measures adopted or envisaged in this respect had already been communicated to the Committee of Experts in the report of 2004. He concluded by emphasizing that the Committee's request for further information on one of the fundamental Conventions had given him the opportunity to reacquaint himself with these commitments, which made of Mexico a country that was building labour peace based on respect for human dignity, globalizing humanism and moving towards a new labour culture under the administration of President Vincent Fox.

The Worker members thanked the Government representative for the information provided. Even though the Committee was discussing this case for the first time, the Committee of Experts had been commenting on Mexico' s application of Convention No. 111 for many years. Reading through the comments led to the conclusion that progress had been achieved. However, in practice, violations of the Convention continued. The application of this Convention, particularly in the export processing zones (*maquiladoras*), was of great importance for the Worker members. In its comments in 2003, the Committee of Experts had noted the statement by the Government that *maquiladora* enterprises were one of the major creators of work for women and that women constituted a majority of the workers in these enterprises. It had requested the Government to take measures to protect women from discrimination in employment and to guarantee them access to training opportunities and better quality jobs. In its latest comments, the Committee of Experts had commented on the systematic discriminatory character of discrimination in employment and occupation based on sex, race and colour. Discrimination in employment and occupation based on sex took two main forms: the requirement of pregnancy tests as a precondition for access to employment; and against women who were already employed in the enterprises through the denial of maternity leave or by compelling them to work under hazardous and difficult working conditions to dissuade them from continuing to work. The Worker members commended the Government for the measures already taken, particularly the Agreement concluded for concerted action to contribute to the continued improvement of labour conditions for women workers in the *maquiladora* industry and to promote in the dissemination *maquiladora* enterprises of national legislation and international treaties on the rights of women workers. They noted the information and statistical data provided by the Government and requested the Government representative to provide additional information on the implementation of the measures that had been adopted so as to determine the number of workers concerned and the results achieved.

The Committee of Experts had asked the Government in its latest comments to revise the Federal Labour Act to establish an explicit prohibition of discrimination on the basis of sex and maternity in relation to recruitment, hiring for employment and conditions of employment. According to the information provided by the Government, sections 3(2) and 133 of the Federal Labour Act already prohibited employers from refusing to hire workers and from establishing distinctions on grounds of age or sex, and a legislative reform was under way. In this respect, the Worker members noted the indications provided by the Government representative that a Bill to amend the Federal Labour Act had been submitted to the Chamber of Deputies and they requested the Government to provide a copy of the Bill. Discrimination on the basis of race and colour took the form, inter alia of vacancy announcements which included among their requirements that candidates should have a light skin. In its report, the Government had indicated that it was difficult to see how this condition could be considered to amount to discrimination against the indigenous population. Yet Article 1, paragraph 2, of the Convention was very clear; only distinctions based on the inherent requirements of a particular job were not deemed to be discrimination. The Worker members recalled that every job offer requiring light skin constituted manifest discrimination. The Worker members welcomed the statement made by the Government representative that he acknowledged the problem. They also requested additional information concerning the investigations carried out ion discriminatory practices and the sanctions imposed. It was important to be able to evaluate the impact of the measures taken

by the Government. The Worker members noted the adoption, on 10 June 2003, of the federal Act to prevent and eliminate discrimination. However, as the Committee of Experts had pointed out, it was regrettable that the Act did not provide for any penalties. With a view to enabling the Committee of Experts to assess the impact of these measures, the Government should provide additional information on this point and on the application of the Act in *maquiladora* enterprises.

The Employer members thanked the Government representative for providing additional information on the continued measures taken to promote equality in employment and occupation and to eliminate discrimination. They noted that the information provided addressed a number of issues raised by the Committee of Experts. They welcomed the opportunity to address this case, which concerned a core Convention and was an example of a case of progress. This case had been discussed on three other occasions over the past six years, and the replies provided by the Government today indicated a commitment to implementing the Convention. The observation of the Committee of Experts this year reflected the continued positive efforts made by the Government to implement the Convention and to respond to previous requests by the Committee of Experts. They recalled that the Convention required national governments to declare and pursue a national policy designed to promote equality of opportunity and treatment in employment and occupation and to take measures to eliminate discrimination in employment. The present case principally concerned allegations that certain enterprises in export processing zones required women to undergo pre-employment pregnancy tests, subjected them to discrimination through the denial of leave and required them to perform hazardous or dangerous work during pregnancy in order to pressurize them into leaving their employment. In response to this complaint and the previous observations, the Government had taken certain steps which had been noted with interest by the Committee of Experts. In particular, the Committee of Experts had referred to the 2002 Agreement between the Secretary for Labour and Social Insurance and the National Council of the Maquiladora Industry for concerted action to improve working conditions for women, through measures which included the dissemination to its members of national legislation on the rights of women; recommendations to member enterprises not to require pregnancy tests; and raising awareness that enterprises should not exert pressure on pregnant women. This Agreement, which was in conformity with the Convention, had led to 15 other similar agreements between states, employers' and workers' organizations and women's organizations.

The Committee of Experts had also noted with interest the Government's initiative through the National Institute for Women, which emphasized the elimination of pregnancy testing. The Committee of Experts had noted the collaboration between the Government and the ILO on the Project "More and Better Jobs for Women", and the launching of the second phase of the project in 2003 to improve the labour rights of women in export processing zones, through measures such as awareness raising and training. These efforts were consistent with the requirements for social dialogue in Article 3(a) and with the key objectives of the Convention. While noting with interest these positive initiatives, the Committee of Experts had also requested additional information and had acknowledged that the Government had provided certain information in regard to these measures. The Employer members had listened to the information presented by the Government representative today on the various measures taken and they encouraged the Government to provide this information in writing to the Committee of Experts. They further encouraged the Government to provide information about the results achieved through its efforts, the mechanisms used to assess the extent of discriminatory practices, the nature of the complaints received, means of monitoring complaints and the investigations completed. These further requests were consistent with the objectives and provisions of the Convention in pursuit of the national policy to promote equality of opportunity and treatment. While the Committee of Experts had noted with interest the adoption of the 2003 Federal Act to prevent and eliminate discrimination, which established a National Council for the Prevention of Discrimination, and which was promotional in nature, it had criticized the fact that the Federal Act did not establish penalties and sanctions. With respect to paragraph 6 of the observation, which called on the Government to establish an explicit prohibition of discrimination, the Employer members recalled that the Convention did not require these types of statutory or administrative enactments. Such a requirement ignored the provisions of Article 2 of the Convention, which called upon governments to pursue a national policy "by methods appropriate to national conditions and practice". The Employer members were also encouraged to hear the Government representative provide information in relation to the comments made in paragraph 9 of the observation of the Committee of Experts concerning vacancy announcements requiring "light skin" candidates. They encouraged the Government to provide information in writing to the Committee of Experts on this subject.

In conclusion, the Employer members stated that they were very encouraged by the positive measures that had been taken by the Government. They hoped that the Government would continue to implement the Convention by pursuing a national policy designed to promote equality of opportunity and treatment with respect to employment and occupation, and that it would continue its efforts to give effect to the recommendations made by the Committee of Experts.

The Worker member of Mexico indicated that the Workers' Confederation of Mexico, together with the employers' organizations and the Government, had joined forces to apply a policy to promote equality of opportunity and treatment in employment and occupation and to eliminate all types of discrimination. In his view, it would have been particularly appropriate to address the question of discrimination in the years immediately following the adoption of the North American Free Trade Agreement, when his organization had repeatedly denounced violations, rather than ten years after its entry into force. Discrimination was not now a general practice, but continued to occur in certain enterprises. The workers continued to fight against it, particularly through denunciations and collective agreements. The Committee of Experts had requested the Government to investigate, punish and eliminate discriminatory practices. It had also requested it to amend the Federal Labour Act in this respect. The workers were not in agreement with the proposal to open up a debate on the Act, because it would give rise to a general debate that they were not seeking. However, what they would accept was certain amendments to adapt and modernize the Federal Labour Act, and which did not prejudice its status as an Act that laid down the rights of workers, to which no retrograde provisions should be accepted. He emphasized that the Committee of Experts had noted with interest the Government policy in relation to the Agreement concluded with the National Council of the Maquiladora Industry, the activities carried out in collaboration with the National Institute for Women, the Federal Act to prevent and eliminate discrimination (10 June 2003) and the activities carried out in collaboration with the ILO in several states. However, he affirmed that it was important to emphasize the role that trade union organizations had played and continued to play in combating discrimination. He also recalled that the Political Constitution, First Title, respecting individual liberties, prohibited any form of discrimination. With regard to point 9 of the observation of the Committee of Experts, concerning vacancy announcements that were discriminatory, he noted the importance of the issue and recalled that article 2 of the Constitution referred to the pluricultural composition of the population and the characteristics of indigenous peoples. Finally, he observed that Mexicans were hardly "light-skinned".

The Employer member of Mexico said that the information on which the Committee of Experts had based its report had been insufficient. The first point in the observation of the Committee of Experts was an account of the allegations received on the requirement of a pregnancy test as a precondition for hiring, the denial of maternity leave and the complicity of the authorities in such practices. With regard to points 2 and 3, he emphasized the agreement concluded with the National Council of the Maquiladora Industry (CNIME) with a view to improving the working conditions of women, the objective of which was to promote awareness campaigns and guidance to prevent practices which violated maternity rights. Furthermore, an additional 15 agreements had been concluded with state governments, employers' and businesswomen's associations. With regard to point 4, he said that the National Institute for Women had highlighted in several institutions that pregnancy tests should not be required, and he recalled that the second phase had begun of the More and Better Jobs for Women project, developed together with the ILO, which contributed to improving labour rights for women workers in the maquiladora industry. With regard to point 5, he recalled that the Committee of Experts had noted with interest the Government's policy to promote equality of opportunity and treatment and eradicate the requirement of a pregnancy test as a condition for hiring, and recognized that innovative measures had been taken. With regard to the Committee of Experts' comments concerning the sanctions applied or envisaged, he said that, although it was important and positive to maintain a culture of prevention and to comply with standards regarding equality of treatment, it was not indispensable to have an amendment to prohibit discrimination on the basis of maternity since Mexican legislation already implicitly contained such a prohibition. The amended Federal Labour Act not only expressly prohibited discrimination on the basis of maternity and other reasons but also prohibited and defined sexual harassment. This reform had been the result of social dialogue between workers and employers. Furthermore, the Federal Act to prevent and eliminate discrimination had been adopted establishing the National Council for the Prevention of Discrimination, which defined discrimination and discriminatory behaviour. Agreements had been concluded between trade unions, chambers of commerce and the Mexican Institute for Social Security, to maintain child-care centres open 24 hours a day in export processing zones. With regard to point 9 on vacancy announcements that were discriminatory on the basis of ethnicity and skin colour, the observation had not specified the number, place or frequency of such announcements and was therefore unfounded. In conclusion he referred to the efforts made in Mexico to eradicate such acts of discrimination and the recognition of these efforts by the Committee of Experts. Finally, he emphasized that his country constituted a case of progress with respect to the application of Convention No. 111.

The Government member of Finland, speaking on behalf of the Government members of Denmark, Iceland, Norway and Sweden, emphasized that discrimination on grounds of sex in working life was in various degrees a problem throughout the world. It was an obliga-

tion of governments to promote and facilitate equal working terms for men and women in employment and access to work. She appreciated the fact that Mexico had already taken various steps to improve the labour conditions of women in the *maquiladora* sector. The various programmes initiated focused on developing women's capacity at work, as well as raising awareness of women's rights at the workplace. As they aimed to ensure the protection and dignity of women workers, as well as the reconciliation of working time and family life, these programmes were of special importance in a sector where workers' rights were not always adequately respected. However, she noted that allegations of pregnancy tests and other discriminatory practices as a precondition for access to employment in the *maquiladora* sector still existed, despite the Agreement between the Secretary for Labour and Social Insurance and the National Council of the Maquiladora Industry (CNIME) that no pregnancy tests should be required. She reaffirmed that equality between women and men needed to be supported by adequate legislation which included sanctions and penalties for discriminatory conduct. The Mexican legislation, according to the report of the Committee of Experts, did not yet seem to include these elements, being more of a promotional nature. She recommended that the Government ensure that the legislation was amended so that, instead of being conditional and subject to an agreement, it was generally applied, provided appropriate consequences for discrimination and was effectively enforced. She urged the Government to provide the information requested by the Committee of Experts and wished it success in its further work of developing working life without gender discrimination.

The Worker member of India stated that the case before the Committee involved a series of systematic discriminatory practices against women both in access to employment and during employment in export processing zones, such as the requirement of pregnancy tests. In export processing zones, women were denied their leave and other maternity entitlements and compelled to work under hazardous and difficult conditions to dissuade them from continuing to work. He expressed the view that such discriminatory practices would continue unless specific labour legislation honouring dignity and womanhood was enacted and implemented. The Government representative had indicated that there already existed a law to promote equality of opportunity and treatment, and to eradicate practices such as the requirement of pregnancy tests. However, the Act in question was promotional in nature and did not provide for any penalty or identify the specific private sectors to which it applied. He noted the allegations concerning vacancy announcements requiring a light skin, which were discriminatory on the basis of the grounds of discrimination set out in the Convention, which prohibited discrimination based on race and colour. In view of this situation, he called on the Committee to recommend the Government to adopt appropriate legislation that made provision for effective penalties in line with the requirements of the Convention and to inform the Committee of Experts immediately of any action in this regard.

The Government representative thanked the members of the Committee for their statements and said that the legislation in his country was the result of a process in which, in accordance with participatory democracy, the citizens contributed to the formulation of laws. In this respect, the Federal Labour Act, which was before the Chamber of Deputies as a proposed reform, was the result of a lengthy and thorough dialogue intended to amend some 500 articles of the Act which contained over 1,000 sections. In this process, it had been borne in mind that nothing was more important than workers' rights, and particularly their right not to be discriminated against. With regard to the absence of sanctions, he said that these were to be set out in regulations, but what was fundamental in the Government's view was the spirit with which decent work could be promoted, which would make social dialogue the basic instrument for achieving harmony in the workplace.

With regard to the situation in the *maquiladora* industry, he explained that it involved around 1.7 million jobs and that between 9,000 and 10,000 jobs were created daily in the sector, which was located principally in border states. He emphasized the importance of the industry for the national economy and assured the Committee that his Government would take great care to continue to provide information to the Committee of Experts on what was happening in areas where this industry was located. In response to the intervention by the Government member of Finland, he maintained that Mexican legislation was adequate and modern. The Federal Labour Act, in particular, was an initiative that could lead to structural change rather than just a few minor changes. What was being proposed was a progressive model which would enable them to work as a nation to achieve labour peace in which employers, workers, the academic world and the Government worked together to reach agreement. In this respect he emphasized that the number of strikes over the past five years had reached its lowest historical level. This was based on social dialogue, communication and negotiation, rather than conflict. With regard to the vacancy announcements requiring persons of light skin, he said that Mexicans, including himself, had dark complexions and were very content with them, but he made a special point of saying that, on 3 March 2006, the Regulation on employment agencies had been adopted, section 6 of which prohibited employment services from discriminating on the basis of ethnic origin, sex or pregnancy, inter alia.

The Worker members recognized that the Government had indeed taken measures to apply the Convention. They nevertheless requested the Government to provide further information on the implementation of these measures in terms of the elimination of discrimination based on sex, and particularly on discrimination against women working in *maquiladora* industries, such as pregnancy tests. They also requested it to supply a copy of the Bill to amend the Federal Labour Act, especially the explicit prohibition of discrimination based on sex and maternity. While progress had been indeed achieved, it was impossible to qualify this case as a case of progress before the Committee of Experts had examined the information provided by the Government. It was therefore to be hoped that the Government would provide written information and statistics in its next report to the Committee of Experts.

The Employer members stated that they were encouraged by the reaffirmed commitment and efforts that had been made by the Government to respond to the issues raised by the Committee of Experts. They encouraged the Government to continue its collaboration with the ILO, in particular in conjunction with the social partners. They also encouraged the Government to follow up on the information it had provided today, which responded to the observation of the Committee of Experts, in particular with regard to the results achieved through its efforts, the mechanisms used to assess the extent of discriminatory practices, the nature of any complaints received, the means of monitoring complaints and the investigations carried out. They also requested the Government to provide the Committee of Experts with copies of the amended Federal Labour Act, as well as information on any other measures taken to advance gender equality, all of which would help to improve the implementation of the Convention. The Government was encouraged to pursue a national policy, as called for by the Convention, and to provide the requested information on all measures taken under Articles 2 and 3 of the Convention, as well as those relating to the situation of women in the *maquiladora* industry. Such measures should be formulated in consultation with the social partners. If the action taken by the Government was consistent with its past efforts, they were convinced that as a result it would no longer be necessary for this case to be considered by the Conference Committee.

The Committee noted the statement by the Government representative and the ensuing discussion. The Committee noted that the observation of the Committee of Experts discussed by the Conference Committee referred to matters that had been under examination for several years, including allegations of a series of practices of systematic discrimination against women in export processing zones (*maquiladoras*), and vacancy announcements that were discriminatory on the grounds of race and colour.

It noted that, according to the ICFTU, there were serious cases of discrimination against women, particularly in *maquiladora* enterprises, where pregnancy tests were required, leave and other statutory benefits related to maternity were denied or pregnant women were obliged to work under arduous or hazardous conditions to dissuade them from continuing to work.

The Committee noted the information provided by the Government representative on this subject. It welcomed the fact that, in 2002, the Secretary for Labour and Social Insurance and the Chairperson of the National Council of the Maquiladora Export Industry (CNIME) had signed an Agreement for concerted action to contribute to the continued improvement of labour conditions for women working in the *maquiladora* industry and that the CNIME had undertaken, among other commitments, to promote in each of its member *maquiladora* enterprises the dissemination of national legislation and international treaties on the rights of women workers. The Committee also welcomed the information provided regarding the activities carried out by the National Institute of Women, in collaboration with employers' organizations and trade unions, to raise awareness and build capacities of women workers, as well as government officials. The Committee noted further that amendments to the Federal Labour Act had been drafted and were under consideration in order to prohibit explicitly discrimination based on sex and maternity. Further, the Committee noted the Government's indication that the Regulations on Employment Agencies of 3 March 2006 explicitly prohibited discrimination in the provision of employment services, including discrimination on the grounds of sex, pregnancy and ethnic origin.

The Committee noted the efforts made by the Government to address discrimination and promote equality, particularly with respect to women workers in *maquiladora* enterprises. However, the Committee noted that the practical impact of these efforts was still unclear and that problems in the application of the Convention still appeared to exist in law and practice, and particularly in *maquiladora* enterprises, in relation to the elimination of discrimination against women.

It considered that it would be necessary to establish means of measuring the impact of the measures taken by the Government and the progress achieved. It therefore requested the Government to provide information on any investigations carried out on the existence of such discriminatory practices, the mechanisms available to monitor the situation in practice, trends in the situation

and the sanctions imposed or envisaged, including statistical information. The Committee also requested the Government to establish flexible complaint procedures, as well as appropriate measures to prevent the requirement of pregnancy tests and similar practices in *maquiladora* enterprises. Noting the Federal Act to prevent and eliminate discrimination, the Committee requested the Government to specify the private sector workers covered by the respective provisions of the Act, including information on *maquiladora* enterprises.

It further noted that the Committee of Experts had requested the Government to consider the possibility of amending the Federal Labour Act so as to explicitly prohibit discrimination based on sex and maternity in relation to recruitment, hiring for employment and conditions of employment. The Committee hoped that the amendments to the Federal Labour Act would be adopted in the near future and called on the Government to take advantage of this opportunity to establish an explicit prohibition of discrimination based on sex and maternity in relation to recruitment, hiring for employment and conditions of employment. The Committee also called on the Government to specifically prohibit vacancy announcements that were discriminatory on the grounds set out in the Convention, including race and colour.

The Committee requested the Government to provide the information presented to the Committee in writing to the Committee of Experts, as well as information on all the points raised by the Conference Committee and the Committee of Experts.

Slovakia (ratification: 1993). **A Government representative** provided detailed information on the legislative provisions on discrimination and described their implementation through numerous judicial decisions. With regard to questions concerning article 8(8) of the Anti-Discrimination Act, he reported that the Constitutional Court had found that this provision, through the acceptance of special compensatory measures, established positive discrimination of persons in relation to their racial or ethnic origins without defining the scope of these compensatory measures. This lack of legal certainty was found to be unconstitutional. The speaker pointed to a number of bodies that dealt with discrimination complaints, including the Slovak National Centre for Human Rights (SNCHR) and the Department of Equal Opportunities and Anti-Discrimination of the Ministry of Labour, Social Affairs and Family. Gender and age-based complaints had been referred to the SNCHR or to labour inspectorates as well as any complaints on discrimination on the grounds of religion. Allegations of discrimination concerning hiring practices had also been submitted to the ombudsperson. In addition, he provided in great detail the different manners in which further implementation was carried out through social dialogue, through education and the organization of awareness-raising activities.

With respect to discrimination on the basis of race or national extraction, the speaker provided detailed information on different measures taken with respect to the Roma communities. Through these different measures 3,000 jobs had been created for unemployed Roma people in 2005, and 6,000 new employment opportunities were anticipated in 2006. In addition, the Social Development Fund, created in 2004 by the Ministry of Labour, Social Affairs and Family to improve integration of minority groups, had supported numerous projects and support structures for the Roma community. These included, in particular, employment projects, local infrastructure development programmes, and the National Support Structure and European Community Initiatives EQUAL, as well as a special project aiming at developing Roma teacher assistants, paediatrician assistants, and promoting primary education. These measures had led to the creation of numerous jobs for members of the Roma community. The speaker concluded by providing detailed information on gender-based measures, including the project "Gender mainstreaming in the national policy and programmes" funded by the UNDP and the publication of a "Proposal of measures toward reconciliation of family and work life in 2006 with an outlook until 2010" with the objective of supporting the reconciliation of family and working life. The objective of these measures was to combat gender discrimination and discrimination based on family status.

The Employer members expressed their appreciation for the information provided by the Government and stated that this case showed what should happen when a country had ratified a Convention. The Government had in its reply demonstrated that measures had been adopted, which had been recognized by the Committee of Experts in its comments. The legislative measures adopted had been noted with interest, as well as the attempts to harmonize the legal framework. An action plan had been adopted with respect to discrimination based on race as well as on gender.

The Worker members noted the information provided by the Government, stressing that detailed information was still necessary. Indeed, the legislation adopted in 2004 would enhance equality of treatment and extended protection against discrimination in employment since it provided, for the very first time, a global protection against both direct and indirect discrimination in the labour market. Despite this encouraging sign, the legislation would not be effective if it were not accompanied by certain positive measures which would rectify some disadvantages related to race or ethnicity. Nonetheless, these measures remained pending. The Worker members made two additional comments. Firstly, they pointed to the additional discrimination in employment and education that the Roma had been exposed to for years. In this respect, they noted that an act of 2002 provided for them an integration policy while another act of 2004 on disadvantaged categories also concerned them. They doubted whether these texts were comprehensive enough to tackle the problems in practice. Secondly, they highlighted the traditional discrimination between men and women, resulting in women being segregated to "feminized" sectors. In view of the lack of information and statistics on the real employment situation and the effect of these new laws on the access of women and Roma to the labour market, it would be difficult to verify the Government's efforts.

The Worker member of Slovakia welcomed the progress made by the Government, in collaboration with the social partners, in the application of Convention No. 111, and noted that labour relations in Slovakia had much improved in past years. She thanked the Government for its responses to trade union requests. She further noted the measures and programmes adopted to increase the employment opportunities for members of groups particularly exposed to the risk of social exclusion. However, the unemployment rates were still high for all disadvantaged groups, particularly the Roma community, and she requested the Government to pursue active employment policies in this regard. Likewise, she welcomed the measures taken with respect to gender equality and concluded by asking the Government to continue its efforts to ensure equal opportunities in employment and occupation without discrimination for all workers.

The Employer member of Slovakia stated that the Government had fully responded to all information requested by the Committee of Experts. The legislation to ensure the application of the Convention had been adopted and even though problems still existed, they were mainly related to cultural and traditional issues that could be dealt with more successfully through education and promotional measures. With respect to discrimination on the basis of race or national extraction, this was not an issue of inadequate legislation but a problem with deep economic and social roots. He stated that in Slovakia the unemployment rate stood at 17 per cent and that more than 60 per cent of the unemployed were persons with low or no qualifications, many of whom were most likely of Roma extraction. He further stated that this was caused by a social system which did not sufficiently motivate persons to accept jobs, especially low-paid jobs. The speaker thanked the Government for the all reforms currently undertaken and stressed the concern of the employers there was an urgent need to significantly change the social system.

The Government member of the Czech Republic stated that with respect to the information requested by the Committee of Experts on the actual number of Roma jobseekers, it was necessary to point out that the law in Slovakia as well as the Czech Republic was built strictly upon a civic basis, where no differentiation was allowed based upon race or ethnic origin. Both countries gave particular emphasis to this principle in the period after 1989 with constitutional provisions that stipulated that ethnic origin ought not be objectively determined by public authorities. For example, in the Czech Republic, it was the Roma community that strongly supported the idea that employment offices should not be allowed to collect or keep any information on the ethnic origin of jobseekers. This was also the case in Slovakia. Therefore, the information requested by the Committee of Experts could not be provided. She noted the importance of addressing the needs of the most vulnerable groups of workers and stressed the importance of finding solutions through continued focus on programmes based on dialogue and cooperation with the communities in question.

The Government representative thanked the speakers for their comments and ensured them that his Government would continue its efforts to ensure non-discrimination for women and men workers in employment and occupation and promote policies and measures targeting the reintegration of the Roma community into the labour market.

The Employer members stated that they had listened carefully to the measures taken by the Government and agreed with the Worker members on the importance of social dialogue to achieve the goals of the Convention. They encouraged the Government to continue to make progress in its application of the Convention.

The Worker members requested the Government to pursue two objectives: firstly, to elaborate together with the social partners an affirmative action plan for women and the Roma in order to establish real equality in practice; and, secondly, to provide reliable statistical information on the level of activities by men and women and the impact of the measures adopted in respect of training and employment in such a way that any progress achieved could be effectively appreciated.

The Committee noted the statement of the Government representative and the discussion that ensued. The Committee noted with interest the information provided by the Government regarding legislative measures on anti-discrimination, related judicial decisions, complaints procedures and the practical implementation of the anti-discrimination legislation. It also welcomed the wide range of projects and programmes to promote the employa-

bility and social and economic integration of the Roma communities, as well as the project on gender mainstreaming in national policies and programmes and the proposed measures on reconciling work and family life.

The Committee drew the Government's attention to the need to ensure that the relevant legislation, programmes and projects were also effectively implemented. The Committee requested the Government to provide full information to the Committee of Experts, particularly with respect to the practical application of the anti-discrimination legislation, the implementation and impact of the gender equality programmes and the programmes and initiatives promoting equality in education and employment of the Roma. This information should indicate the steps taken to ensure sustained follow-up and monitoring, as well as statistical information on the employment and training of women and men, that would allow the Committee of Experts to evaluate the progress made. The Committee also requested the Government to work with the social partners to develop a positive action plan aimed at achieving both formal and substantial equality for Roma and women.

Convention No. 122: Employment Policy, 1964

THAILAND (ratification: 1969). **A Government representative** stated that, with regard to employment policy and social protection, the Unemployment Insurance Scheme, enacted in accordance with the Social Security Act of 1990, provided for people who were unemployed to receive benefits as long as they met the requirements of the regulations. Employees who had resigned from their jobs or been laid off, and had paid contributions to the social security fund, would be provided with benefits under various conditions. They had to be able to do any work provided or any training course offered to them, and they also had to register with the public job placement office and report to it once a month. They should not have been laid off as a result of their faults. Statistics showed that, between July 2004 and April 2006, a total of 227,862 persons had registered for the scheme, averaging 10,357 persons a month. A change in the statistical trend occurred in January 2005 after the tsunami catastrophe in December 2004, following which the average number of people registering per month increased to 12,935. In the six southern provinces, meanwhile, 39,950 people registered with the scheme. Re-employment rates had also been increasing. Resources had been allocated to the Department of Employment, which had created a strategy for public job placement, for which performance indicators had been set, namely that at least 25 per cent of those sent to attend a training course should be recruited into employment, 1.5 per cent should be in retraining or skills upgrading and 0.25 per cent in self-employment.

With regard to the coordination of employment with poverty eradication, he indicated that since ratifying the Convention in 1969, his country had made several efforts to translate its principles into practice for the development and economic growth of the country. In view of the significant impact of employment in reducing poverty, in 2005 the Government launched its poverty eradication policy, which focused on improving the entire administrative system, mobilizing not only individuals but also communities and the whole nation to achieve poverty alleviation, and building mechanisms to enable the poor to utilize assets and resources efficiently and in a sustainable manner. This strategy was aimed at increasing incomes, mainly among rural workers by providing microfinance schemes at the village level, cattle and other agricultural inputs for hire. There were also other schemes to enable people to obtain income while remaining in their homes. He emphasized that the Government had made great efforts to maintain low unemployment rates for the past five years. Job matching and skills database schemes had helped to readjust regional disparities in the supply and demand of labour. However, as a result of rising oil prices and interest rates, sluggish investment, including the falling consumption which had caused a slowdown in the domestic economy, the country's unemployment rate might rise to 2 per cent in 2006 from 1.5 per cent the previous year. In this regard, the Ministry of Labour was mandated to promote employment with a view to supporting poor people so that they could be self-reliant. Many programmes had been implemented under the responsibility of the Department of Skill Development (DSD) and the Department of Employment (DOE) to increase and expand employment opportunities by providing employment services to target groups, especially women, people with disabilities, youths and other disadvantaged groups. He provided figures showing the achievements of these programmes.

On the subject of labour market and training policies, he indicated that there were various training programmes, which might be categorized as pre-employment training, upgrading skills training and retraining for new entrants to the labour market, such as youth, newly graduated students, existing workers and the unemployed, or those transferring from one job to another. There were three classifications of occupational skills standards, namely: national skills standards setting, skills standards testing, and supervision of the skills testing of workers seeking overseas employment. With these skills, jobseekers could gain access to the labour market more easily through employment overseas in the service sector in such areas as care for children and the elderly, as well as Thai cooking. These jobs were promoted in many countries in Asia and Europe. With regard to skills development promotion and coordination, under the Skill Development Promotion Act of 2002, tax exemption and other benefits would be offered to enterprises which provided or supported skills training for their own employees, and enterprises would be encouraged to employ employees with national skills standards certification. The National Board of Vocational Training Coordination (NBVTC) had been set up to oversee the skills development promotion and coordination scheme.

With regard to labour market information, he informed that the DOE had created a nationwide unemployment registration system and a labour market information network linking public and private employment services at the national, regional, provincial, district and community levels. The DOE published a monthly labour market information magazine, a quarterly magazine and an annual magazine. The DOE had also developed labour market indicators to create an early warning system and to guide policy by analysing and setting indicators on labour market issues, revenue and labour productivity. Turning to the subject of the prevention of discrimination and the equality of treatment for men and women in general, the objective was to achieve equality of opportunity for men and women workers in access to employment, education and training. The Government followed the constitutional principle that all persons were equal before the law and enjoyed the same protection, emphasizing that men and women enjoyed equal rights while discrimination on the grounds of sex was prohibited. In relation to persons with disabilities, he indicated that specific projects were being implemented to support employment opportunities, including: a project for skill development of disadvantaged women in the northern area; a project for the part-time employment of disadvantaged youths, persons with disabilities and orphans; a project to provide introductory courses for future employees which provided trainers with general knowledge in the areas of intimate relations, HIV/AIDS prevention, drug abuse, environment and energy preservation, children's rights, gender status, labour law and career search techniques; and a project, undertaken in cooperation with UNICEF, to promote employment opportunities for juvenile delinquents.

He added that a scheme had been established to register illegal migrant workers and, although it had not reached those concerned, the registration of many thousands of migrant workers had improved their situation. The scheme aimed at providing illegal migrant workers with legal rights and benefits that were equal to those of Thai nationals and had been established in accordance with the Working of Aliens Act, 1978, and the relevant Cabinet resolutions. Further Cabinet resolutions had been adopted to achieve a reduction in the number of illegal migrants from neighbouring countries and to allow those registered under the scheme in 2004 to stay and work in Thailand until 30 June 2006. These migrant workers were allowed to work as unskilled workers and housemaids and to accompany their employers when travelling to other areas. They were also allowed to work with new employers if they faced problems of unfair working conditions. In 2005, a total of 705,293 migrant workers had requested a work permit, mainly from Myanmar (75 per cent), as well as from Cambodia and the Lao People's Democratic Republic. In relation to workers in the rural sector and the informal economy, he informed the Committee that measures had also been taken to improve the productivity of homeworkers, firstly by enabling them to obtain work contracts from employers qualified to this effect, secondly through training courses in basic business disciplines, such as accounting, management and legal knowledge, and skills development in producing high-quality products. The Fund for Homeworkers had been established so that they could borrow money to buy raw materials and machines to manufacture products. The DOE was also in the process of drafting an employment promotion law to obtain high-quality data on employment and unemployment and to integrate them into a long-term plan to develop human resources in Thailand through educational institutions.

Finally, he stated that his Government had given a significant role to consultation on labour matters in various tripartite bodies. With regard to the consultations held with representatives of the informal economy and the rural sector, Thailand had cooperated with the ILO Regional Office in Bangkok in implementing a programme for the informal economy with a view to providing greater protection for the workers concerned. Seminars and workshops had been organized and research conducted to raise awareness and enhance capacity to pave the way for the extension of labour protection. Draft legislation was also being prepared for the protection of informal economy workers.

The Employer members thanked the Government representative for the information provided and recalled that the Convention called for the implementation of active policies aimed at guaranteeing full, productive and voluntary employment. Such policies had to be periodically reviewed and formulated in consultation with the social partners. They pointed out that this was the first time that this case was being examined and that the Committee of Experts had only made one observation on the case. They emphasized that Thailand had experienced one of the highest rates of economic growth in the region since 2002, which had made it possible to reduce unemployment to 1.8 per cent despite the devastating effect of the tsunami and the increase in the price of oil. They then referred to some of the issues raised by the Committee of Experts. With regard to the first point, in relation to which the Committee of Experts had requested information on the

development of unemployment benefits as a complement to employment policies, they maintained that the question was only meaningful in the context of the Convention to the extent that it was linked to the effectiveness of active employment policies, or in other words, how successful passive policies or benefits were in encouraging a return to work when combined with active employment policy measures. With regard to the second point, the Committee of Experts had mentioned the coordination between macroeconomic and social policies with a view to alleviating and eliminating poverty. In this respect, it was necessary to conduct an assessment of the impact of the Government's social and macroeconomic policies based on any data the Government representative might be in a position to provide. The Committee of Experts had also commented on the relationship between labour market and training policies. In this respect, they emphasized that, in the context of policies aimed at promoting full employment, the issue of training was essential considering the growing need for updating workers' competencies. They agreed on the need for information on the effectiveness of such policies and the participation of workers' and employers' organizations in their formulation and application.

The Committee of Experts had also requested information on the progress made to promote the access of persons with disabilities to employment. A process to amend the Rehabilitation of Disabled Persons Act was apparently under way. On this matter they emphasized the need to adopt effective measures and programmes to eliminate physical barriers and training deficiencies and to promote the recruitment of persons with disabilities in the private sector. With regard to the policies aimed at preventing abuse in migrant labour recruitment, there was no data on which to assess the extent of the problem. In any case, migrant labour policies had to provide support measures to ensure a better social and cultural integration of migrant workers. With reference to the Committee of Experts' comments on the measures adopted to increase employment opportunities in the rural sector and in the informal economy, the Employer members observed that the macroeconomic, fiscal, training and labour policies as a whole had to lead to a decrease in the informal economy or to its incorporation into the formal economy so as to guarantee better working conditions for all workers. In conclusion, they emphasized the importance of a stable macroeconomic situation, which promoted the competitiveness of the business world as a key factor in wealth and productive job creation. Based on the available data, it could be inferred that the recent trends in the Thai economy had had a very positive impact on the employment situation. They also requested the Government to continue to supply information in this respect.

The Worker members thanked the Government for the additional information. A reading of the Committee of Experts' comments gave the impression that, although some progress had been made, there was still much to be done. However, the information provided by the Government representative had shed some light on the ambiguity apparent in the comments. With regard to the Committee of Experts' request for better coordination between the Government's employment and social protection policies, the Worker members noted with satisfaction the measures taken by the Government, namely the establishment of a system of unemployment benefits and a universal healthcare scheme. Concerning the coordination of the employment policy with poverty reduction, they emphasized that, although the number of persons living in poverty had shown a decreasing trend since the financial crisis of 1997, it was not significant enough. Moreover, it was not clear whether the employment policy applied to workers in the rural sector and informal economy. With regard to vocational training programmes put in place for vulnerable groups, the Worker members indicated that, although there had been positive results for the employment of young persons, there was very little information on women in poor areas and homeworkers. Furthermore, despite the progress made by the Government, the employment policy had not succeeded in eliminating a certain number of discriminations. Although there were fewer women workers than men workers, women were always overrepresented in activities which did not ensure a stable income, such as home work, agriculture and manufacturing. Persons with disabilities were paid two-thirds of the wages of other workers. Moreover, although there were several guidance and vocational training programmes for workers in the rural sector and informal economy in the villages, among which the project to increase their productivity and safeguard their occupational safety and health of homeworkers, which had been set up with ILO cooperation, the results of these programmes were not available. Migrant workers on the other hand, were still victims of abuse as regards both recruitment and exploitation at work. It was difficult to understand the Government's decision to turn down an ILO project in favour of migrant workers. Finally, with regard to tripartite consultation on employment policy, although the Government had taken into account some of the recommendations in establishing its unemployment insurance system, it had not done likewise in its capacity-building policy. In conclusion, the Worker members noted that it would have been better if the Government's information had been sent earlier to the Committee.

The Worker member of Australia stated that the Thai economy had made many strides in achieving a high rate of economic growth since the financial crisis in 1997. However, the trend away from paid employment in the formal sector had started before the crisis, and there was evidence that the informal sector was still growing. She emphasized the need for further detailed information from the Government to assess trends in the employment situation, and especially that of vulnerable groups of workers. It was important to include in the country's macroeconomic policy framework a detailed assessment of the impact of changes and needs in the labour market with a view to the effective coordination of employment policy and poverty alleviation, and for the country's recovery effort after the tsunami. With regard to Article 1 of the Convention: Prevention of discrimination, she noted that she had not observed significant improvements in the Government's commitment to increasing the participation of vulnerable groups of workers, such as women, homeworkers, people with disabilities, migrant workers and workers in the rural sector and the informal economy. The working conditions and lives of these workers would be improved by greater compliance with the national legislation and by bringing the legislation into greater conformity with the ILO's fundamental Conventions and the relevant United Nations instruments. Effective trade unions could also play an important role in the effort to overcome discrimination, thereby strengthening employment policy in the context of the Decent Work Agenda, with particular reference to the payment of fair wages, equal remuneration for work of equal value and safe and healthy working conditions.

Concerning migrant workers, she recalled that Thailand was host to some 2 million migrant workers from Cambodia, the Lao People's Democratic Republic and many from Myanmar. The latter had left their homes as victims of internal conflict and militarization, severe economic hardship and political and minority persecution. They were therefore especially vulnerable. She took note of the Government's efforts to integrate them into the worker registration system or place them in camps for temporary displaced persons. As a result, in 2004, some 1.28 million people had been registered as foreign migrant workers and given permission to work, seek employment or stay on in the country as dependants until 30 June 2005, a period which had since been extended by 12 months. On the other hand, she pointed out the serious lack of effective mechanisms for the legal protection of such workers. Although labour inspection facilities existed, they needed to be improved. The budgets of local labour offices were not effectively distributed and awareness of these mechanisms was lacking, resulting in the abuse of migrant workers' rights, especially in border provinces, where many had to work in dangerous, dirty and difficult jobs. She therefore emphasized the importance of enforcement of the relevant national legislation. Moreover, when workers were allowed to organize, they were in a better position to assist the Government to enforce the law. Workers' and employers' representatives could also play a more constructive role in increasing respect for national labour laws. She called on the Committee to seek more detailed information about employment policy and programmes and their impact, especially for the most vulnerable groups of workers. Both political will and a commitment to social dialogue were needed, so that the worker and employer groups could be partners in the development and implementation of employment policy.

The Worker member of Japan welcomed the developments noted in the report of the Committee of Experts in the field of social protection, especially social security. However, she pointed out that 80 per cent of the population, or 51 million people, mainly informal economy workers, agricultural workers and the family members of workers, were still not covered by social security. For this reason, she called on the Government to improve the implementation of social security systems. Changes were required in the relevant legislation to ensure the social protection of those who were not currently recognized as workers and who therefore fell outside the scope of labour legislation. Detailed information on the measures adopted should be provided to the Committee of Experts. She also emphasized the need to encourage the development of a sustainable economic and social environment, so that workers could have better access to safe and adequately paid jobs with social protection. Thailand was well placed to improve employment policies and advance the Decent Work Agenda. With regard to tripartite consultation, she welcomed a report by the National Congress of Thai Labour expressing satisfaction on the subject of consultations, although with a reservation as to their practical impact. In view of the complex situation of the trade union movement in Thailand, she called on the Government to make great efforts to ensure that the true voice of workers was reflected in genuine tripartite consultation as these workers were, according to the terms of the Convention, the "representatives of the persons affected by the measures to be taken". The efforts made should be aimed at providing adequate protection for all working persons, whether or not they were classified as workers. Legislative reforms would be needed to enable the country to ratify Conventions Nos. 87 and 98, and she trusted that Thailand had the necessary political will to carry them through.

The Government representative thanked the members of the Committee for their valuable statements, which had been noted and would be taken into consideration for the further strengthening of employment policies in his country. He reaffirmed that the measures and action taken by his Government in relation to employment promotion reflected its continued will to bring about economic growth and the development of the country and its people and in so far as possible to overcome unemployment, in accordance with the objectives of the Convention. With regard to migrant workers, he emphasized that, in the context of the efforts to achieve decent work, workers would

receive equal protection under the labour legislation irrespective of whether they were Thai nationals or migrant workers. In conclusion, he indicated that he would be happy to provide any further information that might be necessary through the ILO Office in Bangkok.

The Employer members reiterated their appreciation of the information provided by the Government representative. They emphasized the positive impact of the economic and social policies adopted by the Government in reducing unemployment, and the improvement in unemployment benefits through the implementation of active policies. Finally, they indicated their interest in additional information on the policies established for the integration of persons with disabilities.

The Worker members noted with satisfaction the progress achieved by the Government in reducing poverty and in the field of social security. They invited the Government to pursue its efforts and to target its employment policy on the most vulnerable groups; develop other training and skills programmes, particularly in the rural sector; energetically promote equal access to education, training and employment, particularly for young and disabled persons; combat the trafficking of persons and the exploitation of migrant workers, preferably with the technical assistance of the ILO. Finally, they recommended to the Government to involve all workers in its employment policy, including representatives of migrant workers and workers in the informal economy.

The Committee noted with interest the detailed and comprehensive information provided by the Government representative concerning the observation formulated by the Committee of Experts. This information related to the most recent labour market trends, including the measures taken with a view to promoting employment generation, skills development and social protection, as well as measures concerning special categories of workers, including migrant workers. It further noted the technical assistance available to the Government and to the social partners through the ILO Subregional Office in Bangkok. This technical assistance might strengthen the involvement of employers' and workers' organizations in the design and implementation of an active employment policy in conformity with this priority Convention.

The Committee further noted the tripartite discussion that took place, and in particular the concerns expressed by various speakers with regard to the opportunities for women workers, workers with disabilities and workers in the rural sector and the informal economy to obtain and retain jobs and to promoting equal access to education, training and employment. The Committee noted that there was a need for action within the framework of an active employment policy to promote the effective integration of migrant workers and to prevent cases of abuse or exploitation. It also encouraged the Government to consult both employers' and workers' organizations to achieve this goal. The Committee, like the Committee of Experts, stressed that the need for measures to ensure that employment, as a key element for poverty reduction, was at the heart of macroeconomic and social policies.

The Committee invited the Government to communicate a detailed reply on the matters raised during the discussion by the Conference Committee and by the Committee of Experts in its observation. It hoped that the Government's report would also include information on the results of the tripartite consultations dealing with employment policies and on the other measures taken to achieve the important objectives set out in this priority Convention.

Convention No. 138: Minimum Age, 1973

KENYA (ratification: 1979). The Government communicated the following written information.

The Government had previously given responses to the Committee of Experts and is happy to note that they have been broadly acknowledged in the current Experts' report as indicative of progress. Kenya wishes to confirm that it is fully aware, not only of our obligation in accurately reporting on progress made in this endeavour, but also in making genuine progress that represents concrete, sincere and well-intentioned reforms to our labour statutes. Kenya finds itself in a situation that calls for carrying out extensive revision of laws that have been in existence for many years; most of which are a carry-over from the colonial administration.

It is in this regard that Kenya would like to thank the ILO for responding to our request for technical assistance to carry out a total overhaul of our labour laws, as well as other Governments including the United States, Netherlands and Canada who, through the ILO action programmes, have provided invaluable technical assistance which has fed into the review process.

It is noteworthy that the achievements made so far have been possible due to the cordial tripartite relations with the social partners: the Central Organization of Trade Unions (COTU-K) and the Federation of Kenya Employers (FKE).

Our comprehensive labour law review process was completed in April 2004 and the draft bills are due for submission to Parliament for debate and their enactment into law.

As pointed out in the report of Experts, the proposed bills adequately cover the concerns raised in Article 2(1) and Article 7(1) of the Convention. In view of the fact that other requested information on the draft bills relates to subsidiary legislation, rules and regulations, which are derived from the main laws, while such regulations have already been drafted, these will be made available once the draft bills are enacted into law. This will also address concerns raised under Article 2(3), Article 3(2), Article 3(3), Article 7(3) and Article 8.

The Industrial Training Act, whose concerns are raised under Article 6, is being reviewed, and we assure the Committee of Experts that once this is finalized the relevant copies will be availed immediately.

As pertains to the legislation on age for completion of compulsory education, the Government, in another exercise to review the Education Act, has appointed a committee to make recommendations on, among others, the age of completion of compulsory schooling, which will be harmonized with the requirements of the Convention and hence eliminate discrepancies pointed out by the Experts.

Besides the proposed amendments in the laws, the Government continues to intensify programmes aimed at eliminating child labour in the country with the help of the ILO/IPEC and other supporting organizations. The time-bound programme (TBP) on elimination of child labour, which is ongoing, addresses child labour and all activities and programmes tailored to be supportive of the implementation of Convention No. 182. We would however appreciate it if we receive further technical assistance in the implementation of Convention No. 138.

In addition, before the Committee, **a Government representative** took the opportunity to share Kenya's experience on labour law reform with other member States finding themselves in a similar situation. She indicated that her Government was fully aware not only of its obligation to accurately report on the progress made with regard to the issues raised by the Committee of Experts, but most importantly of its obligation to make genuine progress through a concrete and well-intentioned labour law reform. She expressed her appreciation to the Office and to the Governments of the United States, the Netherlands and Canada for providing invaluable technical assistance in the course of the review process. She thanked the Central Organisation of Trade Unions and the Federation of Kenya Employers for their contribution to the labour law review process, which had been completed in April 2004. The speaker maintained that the draft Bill, which was currently due to be submitted to the Parliament for adoption, addressed the points made by the Committee of Experts under Articles 2(1) and 7(1) of Convention No. 138. As to the concerns raised by the Committee regarding Articles 2(3), 3(2), 3(3), 7(3) and 8, the speaker informed the Committee that these were covered by subsidiary legislation, namely draft rules and regulations, which would be enacted subsequently to the main Act. Similarly, the Industrial Training Act that raised issues under Article 6 of the Convention was being reviewed and would be made immediately available once finalized. Turning to the question of the age for completion of compulsory education, the speaker stated that her Government had appointed a committee to examine the issue and make recommendations with a view to harmonizing national legislation with the standards of Convention No. 138. She emphasized her Government's resolve and commitment to comply with the requirements of the Convention just as it had done with Convention No. 182 on the Worst Forms of Child Labour. With a view to protecting young persons, which was a key objective for the Government, programmes aimed at eliminating child labour such as the time-bound programme, had been intensified. In closing, the speaker highlighted the importance of the support offered by the Office through the International Programme for the Elimination of Child Labour (IPEC) and expressed her Government's wish to receive further technical assistance in the implementation of the Convention.

The Worker members were astonished that the Government replied to the observations of the Committee of Experts with yet another promise that copies of requested legislation would be submitted. Instead of having provided an explanation of obstacles and difficulties encountered that would explain the delay, the Government seemed to congratulate itself for progress achieved without any concrete proof. Indeed this was only self-proclaimed progress. Already during previous discussions on this case in 2001 and 2003, the Government had undertaken to amend or repeal the legal texts to ensure the full application of a number of Articles of the Convention, particularly with respect to: the limits of the scope of application of certain texts that were contrary to Article 2(1); unpaid work by children in family agricultural activities and business enterprises; the age of completion of compulsory schooling; the determination of hazardous work; the regulation of professional training and apprenticeship; the age for admission to hazardous work and its definition; and the participation in artistic performances. Regarding all these points, the Government referred to "work in progress" or "planned for the future". This was not good enough to constitute a case of progress. The Worker members hoped that the promises would be kept and that the legal texts would be promulgated in the near future.

The Employer members recalled that upon ratification of Convention No. 138, Kenya had undertaken to pursue a national policy designed to ensure the effective abolition of child labour and to progressively raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of

young persons. In their view, the main issue was not that Kenya had not designed a national policy, since it had implemented the Employment Act of 1976 and that of 1977 as well as the most recent Law of 2001, but rather, that in its last report, the Committee of Experts had highlighted ten separate areas as opposed to the six highlighted in its 2003 report. This led the Employer members to believe that the situation might have deteriorated and that there was a lack of momentum on the part of the Government to comply with Convention No. 138. The case at hand was serious because it involved a violation of fundamental human rights. At the same time, the absence of sufficient information concerning what was happening on the ground hampered the Committee's work. According to the information recently provided by the Government, child labour affected 1.9 million children between 5 and 17. Only 3.2 per cent of these children attended a secondary school education while 12.7 per cent had no formal schooling at all. The Employer members maintained that although the Kenyan Government had taken steps to improve the situation of children by providing free primary-school education, implementing programmes to feed children at school, reaching children in remote areas and discouraging the practice of female genital mutilation, there was still much to be done and much to be concerned about. Turning to the specific points raised by the Committee of Experts, they requested the Government to provide concrete information on the timetable for the adoption of the amended legislation that extended the application of the minimum age for admission to employment to all sectors of the economy rather than just industrial undertakings, as well as that for the adoption of legislation that protected children engaged in unpaid work. The Government should also submit the text that fixed the age of completion of compulsory schooling at 16, the draft list of hazardous work, which it developed in consultation with the social partners as well as the text of the regulations issued by the Minister concerning the periods of work and establishments where children under 16 years of age could work. Furthermore, the Employer members requested the Government to set a timetable for the adoption of amendments concerning the minimum age for entry into apprenticeship and encouraged the Government to seek technical assistance with a view to amending the legislation on the minimum age for the entry of children into light work, not harmful for their health or development. They did not doubt the Government's will to eradicate child labour but rather its resolve to make the necessary legislative changes to comply with the Convention. Given the time that had elapsed since 2003, they invited the Government to commit itself to making a strong and sustained effort to implement the Convention and to be transparent about the difficulties involved in this undertaking.

The Worker member of Kenya underlined the need for urgent measures to address the issues highlighted by the Committee of Experts and expressed his concern about the timetable for the adoption of the necessary legislative amendments. The questions raised under Article 2(1) of the Convention, namely the limitation of the prohibition to employ children in industrial undertakings and the lack of protection of children engaged in unpaid work, needed to be addressed urgently. On the minimum age for completion of compulsory education, which under the Convention was set at 16 years of age, the speaker indicated that in Kenya compulsory schooling only covered the ages from 6 to 14. He maintained that the labour laws that were drafted in 2004 addressed the question of determining hazardous types of work for children as well as that of admission of children to light work. However, these laws had not yet been enacted by Parliament. The Government had also failed to submit the text of the regulation on periods of working and the establishments where children under 16 could be legally employed. As to the minimum age for entering into an apprenticeship, the Government had not yet taken steps to bring national laws in line with the Convention. The same applied to the question of regulating the conditions under which children could be allowed to participate in artistic performances. Finally, the Government had also failed to provide the Committee of Experts with statistical data on employment of children and inspection reports due to the lack of properly functioning labour inspection services. The speaker acknowledged that the draft bill, which had been prepared with ILO technical assistance and consultation with the social partners, addressed a number of important issues. The problem was that this draft bill had not yet been enacted by Parliament, as a result of which the lives and future of millions of Kenyan children were irreparably damaged. The speaker urged the Committee to be firm with Kenya in demanding a time frame for the enactment of the labour laws that would help address some of the problems the country was facing.

The Government member of Namibia expressed his delegation's appreciation for the information the Government had provided to the Committee. He was happy to note that the legislative amendment process had been carried out with the participation of workers and employers. He wished to recognize that the Government of Kenya had made significant progress in bringing its legislation into line with the provisions of the Convention and encouraged the Government to continue its work.

The Worker member of Senegal stated that the Committee had already in 2003 examined this case of both serious and repeated violations of Convention No. 138 and that the Government had promised to take suitable action in order to eradicate the curse of child labour. The glimmer of hope brought by the ratification of Convention No. 182, being complementary to Convention No. 138, never came true. The situation had not progressed and the requested measures were never taken. The Government repeatedly stated that measures would shortly be taken but the Committee was tired of waiting. This attitude encouraged unscrupulous employers to continue exploiting children, particularly in the agricultural sector, where there were serious risks. The same applied for children engaged in domestic work. The legislation was not in conformity with either the spirit or the letter of the Convention, be it in the unjustifiably narrow scope of application of the legislation, or with respect to the determination of the list of hazardous work, which had still to be communicated. The extent of the points raised by the Committee of Experts showed the failings of the Government that had remained deaf to the appeals of this Committee. The promises of the Government should be firm since a grace period had already been granted, but time was now running out.

The Government member of Nigeria, speaking on behalf of the Africa group, called on member States to carry out their obligations regarding the Conventions they had ratified. The rights of the social partners had to be protected and social justice had to be maintained. The Africa group associated itself with the efforts made by Kenya to comply with the provisions of ratified Conventions. She recalled that the country had requested technical assistance for the review of its labour laws, which had been provided by the ILO, and that the review process had been completed in 2004. The bills which were drafted since took into account the concerns of the Committee of Experts. However, she requested the ILO to favourably consider the request of the Kenyan Government for further technical assistance.

The Worker member of Swaziland concurred with statement of the Worker members. He reminded the Government that ratified Conventions had to be enforced, irrespective of the rhetoric on political will. Since 2001, the Government was promising the Committee to change the legislation, but despite technical assistance from the ILO, the new legislation was still not enacted. The Government should be called upon to have the long promised reviewed legislation promulgated, and to submit a report before the end of this year. Its failure to provide even basic information such as statistics on boys and girls, their ages, geographical distribution and the sectors concerned, showed the lack of commitment on the part of the Government in addressing the issues raised by this Committee, and by the Committee of Experts. Again, the speaker urged the Government to respect fully the commitments arising out of the ratification of ILO Conventions.

The Government member of Zimbabwe said that the ongoing labour law reforms in Kenya which were taking issues of child labour into consideration should be commended. He found it unfair that a country that had shown such commitment to reforming its labour laws with a view to bringing them into line with the obligations of the Convention should be listed at this session. Legislative reform took considerable time and Kenya was positively moving towards these reforms.

The Government representative thanked the speakers for their comments and apologized if her statement had not fully answered all questions. She stressed that the Government could not impose a timetable on the Parliament for examining bills, but indicated that her Government would try to put pressure on the legislature in order to get the amended labour laws enacted. She recalled that the Government that had been elected in 2003 had made the welfare of children a priority and had provided primary education for all. While progress had been made in this case, she stated that her Government was still far from satisfied with the status of children in the country. She pledged that next year Kenya would no longer figure on the list of cases, at least not with regard to the issues at hand.

The Employer members expressed their regret about the fact that, although the legislative review had been completed in 2004, the draft legislation had not since been submitted to Parliament for adoption. The Government had stated that the adoption of the Bill would be subject to the Parliament's own procedures and schedule. This led the Employer members to believe that the reform of the labour laws was not a priority for the Government. It followed from the discussion that the Government was very clear about the importance of the issues discussed. They acknowledged and welcomed the Government's request for technical assistance, emphasizing that good intentions were always welcome. They asserted that it was high time for the Government to demonstrate that their trust had not been mistaken and invited the Committee to consider whether it was satisfied that progress would be made.

The Worker members pointed out that the examined failings in the application were serious. The Government recognized the problems but fell back on promises already made. The Government should therefore take immediate action and adopt the laws and regulations whose promulgation had been announced in order to assure conformity with the Convention. It would also be suitable for the Government to submit a detailed report on the progress achieved on all points raised in order for dialogue to be pursued.

The Committee noted the written and oral information provided by the Government representative and the discussion that ensued. The Committee noted the information contained in the report of the Committee of Experts relating to various issues including the minimum age for admission to employment or work

in all sectors, the definition of hazardous work as well as the regulation of light work.

In this regard, the Committee noted the Government's indication that draft laws referred to by the Committee of Experts in its observations were due for submission to Parliament for debate and adoption. It also noted that a Committee had been set up recently by the Government to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling. The Committee further took note of the Government's commitment to implement the Convention through various measures including the adoption of a time-bound programme (TBP) with ILO/IPEC that was ongoing. Finally, the Committee took note of the Government's request for technical assistance.

While noting the Government's indication that it intended to adopt legislation soon dealing with children and child labour to conform to the provisions of Convention No. 138, the Committee recalled that this Convention had been ratified by Kenya more than 25 years ago. The Committee further noted with concern that the review of the draft laws in question, which had been undertaken in consultation with the social partners and with ILO technical assistance, had already been completed in April 2004 but not yet adopted by Parliament. The Committee, therefore, firmly hoped that the necessary provisions would soon be adopted to address all the issues raised by the Committee of Experts, including the extension of the minimum age to all types of work, in addition to industrial work, the determination of the types of hazardous work to be prohibited for children under 18 years of age, and the regulation of light work. Considering that compulsory education was one of the most effective means of combating and preventing child labour, the Committee urged the Government to ensure that legislation addressing the gap between the age of completion of compulsory schooling and the minimum age for admission to employment or work would be adopted shortly. The Committee took note of the Government's request for ILO technical assistance and asked it to avail itself of such assistance with the view to giving effect to the Convention in law and practice as a matter of urgency. The Committee firmly hoped that the Government would provide detailed information, in its next report to the Committee of Experts, on progress made in complying with this fundamental Convention in law and in practice.

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

IRELAND (ratification: 1986). **A Government representative** indicated that in order to streamline services to people with disabilities the Government had transferred policy responsibility from the Department of Health and Children to the Department of Enterprise, Trade and Employment (DETE) in June 2000. The broad policy objectives were reflected in the DETE's strategy for 2005-08 and in the FAS (State Training Agency) strategy. Programmes and support measures were developed through a three-dimensional approach involving facilitation of disabled people's progress into sustainable employment through skills development; raising awareness among employers and workers of disabled people's contribution to business and the workplace; and providing specific employment supports for disabled people and employers. FAS operated a range of services to address recruitment and workplace barriers which included: an interview interpreter grant to assist those with hearing or speech impairment at job interviews; a personal reader grant to blind or visually impaired people in employment to help with job-related reading; a workplace equipment/adaptation grant to employers to assist in the integration of disabled people into employment, including deaf people; an employee retention grant scheme to retain workers who became disabled and retrain them for their work or alternative duties; a wage subsidy scheme for employers employing disabled people assessed as 50-80 per cent of normal productivity levels; supported employment where job coaches sourced jobs and provided support at work in the open labour market; a pilot programme scheme which granted employers with 50 per cent of the workforce made up of disabled people grant assistance; and disability awareness training programmes, designed to ensure service provision to clients/customers with disabilities and help optimize relationships between staff and staff with disabilities. FAS also provided training allowances and grants, details of which could be found on its web site.

The social partners were involved in a key initiative between the Irish Business and Employers' Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU) known as Workway, set up under the National Social Partnership Programme and entitled Programme for Prosperity and Fairness. The aims were to raise awareness and promote employment of people with disabilities in the private sector. Funding was provided by the Government and co-funding by the European Commission. Workway was the first project in Europe to adopt a partnership approach to high unemployment among people with disabilities. In addition, the FAS National Advisory Committee for Disability was made up of representatives of the Irish social partners and advised on policy initiatives. The National Disability Authority (NDA) was established in 1999, and, under the Disability Act 2005, played a key role in helping government departments meet obligations to people with disabilities. It helped in coordination and development of a disability policy, undertook research and developed statistics for the planning, delivery and monitoring of programmes, advised the Ministry on standards and codes of practice and monitored these, and took the lead in promoting equality for people with disabilities. The social partners were members of the NDA, which was instrumental in organizing the Paralympic Games, which took place in Ireland in 2003.

The Worker members welcomed the additional information supplied by the Government representative. They recalled that concrete experiences in each country demonstrated just how difficult it was to successfully generate greater employment opportunities for persons with disabilities. They were pleased, therefore, to witness the concerted effort, on the part of the Government and the social partners, to integrate persons with disabilities into active life. They also welcomed the Government's initiative to promote, in partnership with the ILO, the application of Convention No. 159 in several Asian and African countries.

The Employer members indicated that in the Spanish text the terms "*personas inválidas*" should be replaced by "*personas discapacitadas*" or "*personas minusvalidas*", which were both more appropriate. They recalled that Convention No. 159 had been adopted in 1983 and that in 23 years it had obtained 78 ratifications, Ireland having ratified it in 1986. As to its content, the General Survey of 1998 had stressed that the instrument implied "for the state party, the commitment to formulate, put into practice and periodically review a national policy on occupational rehabilitation and the employment of handicapped persons, in conformity with conditions and national practice and as a function of its possibilities", considering as "occupational rehabilitation" the possibility for handicapped persons to find a job, to stay in it and progress professionally in a way that improved the inclusion of these persons in society. This was a promotional Convention, which tended towards the adoption of provisions defining objectives to be achieved while leaving a certain freedom to ratifying States as to the choice of methods, which they intended to use and the timetable they established for the measures to be implemented. In the framework of discussions on the General Survey of 1998, the Employer members had stressed the noble aspect of the ILO's commitment in aiming to improve the situation of persons with disabilities. It was a sign of true humanity to take interest in the status of the less favoured and to seek to integrate them in the best way possible into active life and society. But good intentions were not enough; the necessary means had to be employed in the most efficient way possible. This was what the Government of Ireland had done both nationally and internationally.

At the national level, through the provision of services to handicapped persons through the Workway project, which was a joint initiative of the ICTU and IBEC. The aim of this programme was to raise public awareness and directly address the obstacles to employment for handicapped persons in the private sector. The Workway web site (www.workway.ie) featured a guidebook that was particularly useful. Private sector employers, as well as persons with disabilities, trade unions, employment agencies and administrative services were working together in four areas, according to the aims set out above, to identify employment opportunities and provide better information on assistance that handicapped persons and employers could call on.

At the international level, in the framework of the programme implemented by Development Corporation Ireland, the Government was providing support to a number of Asian and African countries with a view to improving the application of legislation on the employment of persons with disabilities. The main features of this programme were laid out in the report of the Committee of Experts. The programme featured a second phase which foresaw courses for certain groups, as well as a campaign in the media aiming at promoting a more positive perception of people with disabilities at work.

The Employer member of Ireland underlined that the Workway project referred to by the Government was a new and innovative model because it brought all interests together in order to identify the issues at stake and develop joint and robust solutions to the ongoing barriers facing people with disabilities in the labour force. Raising awareness amongst employers, co-workers and persons with disabilities, and developing pragmatic tools reflecting workplace realities, the project had produced a range of resources to meet the needs of these individual target groups. It had been discovered that the barriers that faced persons with disabilities, employers and union representatives were much the same in all parts of the country. These barriers included, for instance, a lack of knowledge about disability or where to access information, a lack of education focusing on the provision of qualifications, or a lack of personal assistants available to people with disabilities. Workway operated through tripartite local networks, which had been established in the four regions of the country, overseen by a National Steering Committee. These networks carried out practical action to address existing barriers. There was widespread recognition that the key in overcoming many barriers facing persons with disabilities lay in contact between employers, co-workers, unions and people with disabilities. A campaign had been launched to publish strong and positive visual images communicating the importance of work for people with disabilities. The speaker also referred to a number of measures taken to address ongoing information deficits. A wide

range of resource materials and tools was available online on the project's web site. The exchange of best practice was a main feature of Workway. In fact, the collection of success stories formed the basis for the *Workway Guidelines on Disability and Employment*, which were a practical source of information and guidance. Further, a *Guide for Job Seekers with Disabilities* was produced to address the limited engagement of people with disabilities in existing pre-employment procedures and structure. The speaker concluded by stating that the main legacy of the project was the Workway Policy Document, which would inform the future direction of policy development on disability and employment in Ireland.

The Worker member of Ireland focused on tripartism in advancing a rights-based approach in supporting people with disabilities to secure and maintain employment in Ireland and internationally. Ireland had experienced a transformation in the way that disability rights were understood. There was a shift away from a medical or welfare model of disability, in which the focus was on the individual's disability as a personal issue, to a rights-based model, in which barriers in society were seen as a major source of disadvantage. Employing this rights-based model through legislation and practice, Ireland had begun to initiate changes that could provide people with disabilities with real opportunities to take their place in society, at school, in training, at work, in politics, in arts and culture, and in social activities. The Irish trade union movement had effectively used the tripartite process to advance this rights-based approach in a very practical, concrete way through the Workway initiative. In addition to its success on the ground, Workway had identified aspects of government policy and service-delivery across the various stages of the pathway to employment, and in employment, which did not adequately encourage the participation of people with disabilities in the workplace. The Workway Steering Committee had prepared a policy paper, identifying the following basic needs that had to be recognized by policymakers and shareholders in order to guarantee the initiative's future progress: (1) significant capacity-building among people with disabilities so that they could contribute themselves to employment policy development; (2) a comprehensive advocacy service for disabled people; (3) enhanced training provisions; (4) national employment guidelines; (5) better cross-departmental and agency links; (6) a resolution to the "benefits trap" for disabled people; and (7) a support mechanism and resources for people who were unemployed and disabled. The speaker pointed out that even though the achievements of the Workway initiative were commendable, employers, trade unions and the Government in Ireland still had work to do. The ICTU had made the issue of the "benefits trap" a priority issue in the current tripartite negotiations on pay and conditions.

Further, the speaker expressed satisfaction that the Government of Ireland had provided funding for the ILO project "Promoting the employability and employment of people with disabilities through effective legislation", which sought to strengthen the capacity of national governments in selected countries of East and Southern Africa, Asia, and the Pacific to improve legislation and policy concerning the vocational training and employment of people with disabilities. This project had already achieved excellent results and had been extended for a second phase (2005-07). The Irish Congress of Trade Unions looked forward to strengthening the partnerships and tripartite process in this next phase. The work of the ILO with Irish funding was highly relevant to the draft United Nations Convention on the human rights of persons with disabilities, which was expected to be adopted in 2006.

The Government member of France considered the initiative by Ireland to be exemplary for several reasons: it promoted employment of disabled persons by fully involving employers and workers; it was a prime example of tripartite cooperation based on local networks (in a field that was a priority in France as well); and the dissemination of good practice through technical cooperation constituted an example of a community of ideas and resources, which should be brought to the attention of the Commission on technical cooperation. The Committee of Experts and the Conference Committee were to be congratulated as this case of progress provided good practices to the entire international community.

The Government representative expressed her gratitude for the positive comments made in the discussion. Genuine progress had been made, but a number of challenges remained. Further progress was only possible if the Government, workers, and employers worked together in addressing those challenges.

The Employer members took note of the discussion and requested that the present case should be considered as a case of progress in the appropriate part of the Committee's report.

The Worker members expressed once again their satisfaction with the measures taken by the social partners and the Government to integrate persons with disabilities into active life. They hoped that these measures would continue, and that the Government would in the future make known, for the benefit of the international community as a whole, the results achieved by this initiative.

The Committee welcomed the discussion and extensive exchange of information that took place on the application by Ireland of Convention No. 159. Like the Committee of Experts, the Committee praised the Government's approach, involving the social partners and the representatives of persons with disabilities, to promote decent employment conditions to persons with disabilities in conformity with the Convention. It noted with interest the detailed and comprehensive information provided to the Committee on the schemes, services and programmes implemented by the State Training Agency (FAS). It observed that the Government of Ireland and the ILO had established a joint programme to support selected governments of Africa and Asia to enhance their capacity to implement effective legislation concerning employment of persons with disabilities. The Committee noted the importance of this Convention that required that employment policies include adequate measures to integrate people with disabilities in the open labour market and expressed its hope that the Office would promote its ratification. The Committee considered this case to be an important example of progress to be mentioned in the appropriate section of its General Report.

Convention No. 162: Asbestos, 1986

Croatia (ratification: 1991). The Government communicated the following written information.

The Republic of Croatia has opted for an integrated solution of the asbestos problem in Croatia by the end of 2006. For this purpose, in January 2006, a coordination body was set up among the three ministries competent to deal with this problem: the Ministry of the Economy, Labour and Entrepreneurship; the Ministry of Health and Welfare; and the Ministry of Environmental Protection, Physical Planning and Construction.

With reference to point 3 of the observation: the coordination body of the three ministries competent for asbestos-related issues in the Republic of Croatia that met in January 2006 adopted the following conclusions. First, the Ministry of Health and Welfare (in collaboration with the Ministry of Justice and the Ministry of the Economy, Labour and Entrepreneurship) will draw up a Draft Bill on Meeting the Claims of Workers Occupationally Exposed to Asbestos. Second, the Ministry of the Economy, Labour and Entrepreneurship (in collaboration with the Ministry of Health and Welfare and the Croatian Health Insurance Institute) will draw up a Draft Bill on Amendments to the List of Occupational Diseases Law. Third, the Ministry of the Economy, Labour and Entrepreneurship will send the Draft Bill on special conditions for acquiring entitlements from retirement insurance for workers occupationally exposed to asbestos to the legislature. The Ministry of the Economy, Labour and Entrepreneurship will propose appropriate measures to encourage the introduction of new technologies for asbestos-free production after receiving and assessing the investment project of the transition to asbestos-free production. Fourth, the Ministry of Environmental Protection, Physical Planning and Construction will draw up a recovery programme for repairing the environmental damage to the factory compound of Salonit d.d. and the Mravinacka kava dump site, and the source of financing involved. The timescale of the end of 2006 was envisaged for the implementation of the said conclusions, by which time all the tasks are supposed to be completely executed. Some of the tasks stated have already been carried out, and some of the agreed on draft laws have been referred to the legislature. The Government has given a detailed description of these draft laws.

In the Ministry of Health and Welfare in 2003 activities started with respect to issues of the diagnosis, treatment and compensation claims of people suffering from ill health caused by asbestos. At that time, a procedure was started for the laying down of distinctive criteria for the establishment of occupational diseases caused by asbestos (asbestosis of the pulmonary parenchyma), dynamics of preventive medical examinations for all employed persons who have been occupationally exposed to asbestos (people who were employed earlier, who have retired et al.) along with an estimate of the resources necessary for such purposes. Since the existing legal regulations did not, in a satisfactory manner, handle the problems of persons suffering from exposure to asbestos, in March 2006 two expert commissions were set up in the Ministry of Health and Welfare for the handling of these issues: first, an Expert Commission for the drafting of an Injury at Work and Occupational Ill Health Insurance Law, and draft Regulations concerning Preventive Diagnosis, Treatment and Surveillance of Persons Suffering from Asbestosis; and secondly, an Expert Commission for the drafting of a Meeting regarding the Claims of Employees Occupationally Exposed to Asbestos Law.

Pursuant to the provisions of the Toxins Law *(Official Gazette*, Nos. 27/99, 37/99 and 55/99), the Ministry of Health and Welfare has adopted a list of toxic substances the production, marketing and use of which are prohibited (*Official Gazette*, Nos. 29/05 and 34/05), according to which, from 1 January 2006, a ban on the production, marketing and use of prescribed asbestos fibres has been in force. However, in line with article 53 of the Chemicals Law (*Official Gazette*, No. 150/05) the Ministry of Health and Welfare, with the consent of the Ministry of the Economy, Labour and Entrepreneurship on 14 February 2006 adopted a List of Hazardous Chemicals, the Marketing of which is Banned or Restricted.

In line with this List of Hazardous Chemicals with reference to the kinds of asbestos fibre known as crocidolite, amosite, anthrophyllite, actinolite and tremolite, these fibres are not allowed to be marketed or used, and neither are any products that contain any of these fibres.

With respect to chrysotile, there is a total ban on the sale or the use of it or of products containing chrysotile, but concomitantly with certain exceptions. From the ban, then, exceptions are made for membranes for existing electrolysis apparatus while it can be used or while it can be serviced, or until an appropriate material without any asbestos fibre contents can be found. The use of products that contain asbestos fibres quoted on the List of Hazardous Chemicals that were incorporated into products before the List of Toxic Substances came into force can be continued until they become waste or until their service life has elapsed. Independently of the regulations that regulate the classification, packaging or labelling of hazardous substances and products, they must, when being marketed or used, be additionally furnished with asbestos signs according to the regulations concerning the labelling of hazardous chemicals.

With reference to points 2, 7, 8 of the observation: labour inspectors regularly carry out inspections in the Salonit d.d Vranjic plant, which produces construction materials, one of the additives during manufacturing being asbestos. The last inspection was carried out during 15-17 May 2006 and the State Inspectorate reported that in Salonit d.d Vranjic this manufacturing line had been halted because it was impossible to market the product, and only two employees were found carrying out works with special conditions of work – working and finishing asbestos-cement pipes. From an inspection of the hazard assessment for the jobs that are undertaken in Salonit d.d in bankruptcy it was found out that jobs with special conditions of work are carried out in a total of 45 positions on which 143 employees are working (out of the current labour force of 179). Of these 143 employees, 84 carry out jobs with special conditions of work described by the Government.

With respect to point 4 of the observation: in the inspectorial control carried out in March 2006 it was determined that the employer regularly carried out inspections of the working environment in line with provisions of the article of the Protection at Work Law (*Official Gazette*, Nos. 59/96, 94/96, 114/03 and 100/04) and the provisions of the regulations concerning the testing of the working environment, machines and plant with increased hazards (*Official Gazette*, Nos. 114/02 and 126/03). The tests are carried out by an authorized firm that possesses a current authorization of the minister competent for labour matters. In the last test of the working environment that was carried out in July 2004 by the authorized firm ZAST d.o.o of Split, it was determined that all the parameters of the working environment were within permitted values including the concentration of asbestos fibres in the air, and appropriate certificates thereto were issued. A list of measured concentration of asbestos dust at all production locations is included.

With reference to points 5 and 9: a labour inspector with responsibility for protection at work determined at the employer that the workers are provided with personal protective equipment laid down by the hazard assessment, that they have two lockers, one for working and one for ordinary clothing, they have shower cabinets and wash basins and that the workers are forbidden to go out of the factory compound in their working clothes or to come in their working clothes to work. The provisions of the Regulations concerning protection at work in the processing of non-metal raw materials (*Official Gazette* No. 10/986) and the Regulations concerning personal protective equipment at work and personal protective equipment (*Official Gazette* No. 35/69) state that an employer has to provide clothing lockers for working and for ordinary clothing, shower cabinets, the laundry of the working clothing, and the kind of personal protective equipment according to the dangers in the place of work. The penal provisions of the Protection at Work Law allow for fines to be imposed on legal entities or corporations in a range from 10,000 to 90,000 kuna, and for a responsible person in a legal entity in a range from 3,000 to 10,000 kuna. A labour inspector with responsibility for protection at work can also on the spot fine workers 100 kuna and his or her immediate supervisor 500 kuna in cases when a worker is not wearing the regulation personal protective equipment, when the worker is smoking in premises where smoking is not allowed, and other cases.

With reference to point 6: after the first unsuccessful experience, the Ministry once again announced a public tender for the drawing up of a rehabilitation programme for Mravinacka kava and the Salonit d.d. Vranjic factory compound, and this was published in the *Official Gazette* of 09/06, 27 February, 2006. The deadline defined for the drawing up of the rehabilitation programme is 20 September, 2006. The Ministry will propose a solution for the funding of the rehabilitation programme. In the meantime, via environmental inspection procedures, the Ministry several times carried out inspections of the Salonit d.d. factory. In the performance of the inspectorial supervision, the measure of covering up the asbestos-cement sludge temporarily deposited in the factory compound was ordered, as measure for temporary rehabilitation. Environmental protection inspectors from the Ministry of Environmental Protection, Physical, Planning and Construction have carried out regular controls of Salonit d.d. factory since 2000. The asbestos waste from the manufacturing process in the Salonit d.d. factory that was previously deposited in an abandoned cave/mine where raw materials for Dalmacijacement had been extracted has not been deposited there, as a result of a ban on the part of the inspectors, since 1 July, 2003. The waste sludge that was created during the process of the production of asbestos building materials and structures, pursuant to orders of the inspectors, was moved from the open-air part of the factory compound into a closed factory shed where it is still waiting final disposition. Asbestos fibres that are in the sludge are stabilized (in solid state) and there are no emissions of particles from the waste sludge in the atmosphere. The rest of the waste (rejects) from the constructional material that contains asbestos, which is also inert and in a solid state, is stored in the factory compound belonging to Salonit d.d. The same Rehabilitation Programme will define the manners and procedures for looking after the remaining asbestos-containing waste from the factory compound of the firm Salonit d.d. Vrajnic.

With reference to point 10: Salonit d.d. Vranjic submitted on 21 March 2005 an application for the import of 2,500 tons of asbestos, the representatives of the firm stating that they were aware that asbestos was on the List of Forbidden Substances, the ban on the use of which came into force on 1 January, 2005, and hence the ban on their product line, but they stated that the sought quantity would be sufficient and it would be used up in the production of asbestos cement products. As we reported above, in line with the most recent inspection carried out at the employer, performed between 15 and 17 May 2006 by the State Inspectorate in the company Salonit d.d. Vranjic, production had been halted because of the impossibility of selling the product on the market.

In addition, before the Committee, **a Government representative** indicated that during the most recent labour inspection a number of photos had been taken, which were available on CD-ROM. His Government was aware that insufficient information and explanations had been provided in earlier reports and that much could have been done earlier. Nevertheless, quite a lot had been done in relation to the problem of asbestos since 1990, including the adoption of new regulations and their implementation. The occupational safety and health legislation in his country was in harmony with Convention No. 155 and the European Union Framework Directive and took into account technical progress and scientific knowledge. He recalled that when the Ordinance on occupational exposure levels had entered into force in 1993, the permitted occupational exposure level to asbestos had been drastically reduced from 175 particles per cubic metre to a mere two particles per cubic metre. His Government was aware that its first priority in the field of occupational safety and health had to be action in relation to asbestos and he believed that his country had started to resolve the problem in an adequate and effective manner. His Government was also fully aware that resolving the problem would require long-term action, not only in relation to the workers in Salonit who were exposed to asbestos, but also bearing in mind future problems related to the demolition of buildings and the replacement of materials containing asbestos. He expressed his willingness to provide any further information that might be needed and to cooperate with all bodies and institutions that could help in resolving the very serious problem of asbestos.

Commenting on the information provided in document D.11, the speaker said that the relevant authorities had engaged in consultations with experts from other countries and Croatia had tried to follow the same approach as that adopted in neighbouring countries. While the occupational safety and health legislation in Croatia provided a good basis for technical action to address the problem of asbestos, he acknowledged that in certain aspects it was not completely in harmony with the Convention. Nevertheless, it was not true to say that there were no regulations respecting asbestos in the country. He added that since 1990 much had been done to improve working conditions, including those relating to asbestos. For example, it was no longer permitted to empty bags under pressure and asbestos dust was not permitted in the environment. Appropriate filters and ventilation systems had to be installed. There was rigorous health surveillance and specific regulations concerning work involving asbestos, including a prohibition on such work being carried out by persons under 18 years of age and those suffering from certain medical diseases. Provision had also been made for early retirement for workers suffering from certain health problems. He added that the help of ILO experts would be welcome in endeavouring to overcome this very serious problem.

The Employer members thanked the Government for the information provided and stated that Convention No. 162 was a very comprehensive technical convention that dealt with an issue which was particularly important for occupational safety and health. The case had already been discussed in 2003 in the Conference Committee. As of 1998, the Salonit factory mentioned in the observation of the Committee of Experts had changed from a public to a private enterprise and represented only 2 to 3 per cent of national industry. Its name should not therefore be mentioned in the observation. In the discussion in 2003, the Government had stated that it was aware of the seriousness of the situation and its responsibility in the matter, and undertook to take a series of steps, including bringing the national legislation into conformity with the Convention through: the adoption of new legislation respecting the treatment of waste and the prohibition of the production and commercialization of products containing asbestos; the provision of adequate incentives for the replacement of asbestos with other products; and the provision of funds for the restructuring of production in the sectors concerned. The reports in 2004, 2005 and 2006 had contained no information on any laws or regulations to give effect to the Convention. Little information had been provided on the allegations made by the workers exposed to asbestos. There was no informa-

tion on the inspections carried out or on the shortcomings regarding personal protective equipment or special protective clothing for such workers. Nor was there any information on possible exposure to airborne asbestos during waste disposal processes, or on measures to provide education and written information to workers on the health risks of asbestos exposure. Furthermore, it was not known whether the Bill mentioned by the Government had undergone a due process of consultation with the most representative employers' and workers' organizations.

They noted that, although the Government representative had provided additional information in his statement, he had not provided any updated information on the situation with regard to the Bill. Although he had provided further details on the inspections carried out and the protective equipment and clothing, the information concerning the treatment of waste and available treatment methods was insufficient. Before formulating their conclusions, the Employer members wished to know whether the Government was in a position to provide more information on the following points: the current situation of the future Act respecting the production and commercialization of products containing asbestos; the extent of the consultations carried out on the Bill; the adequacy of the inspection methods to measure the presence of asbestos; and the measures envisaged to treat waste containing asbestos in the above enterprise.

The Worker members thanked the Government representative for the oral and written information provided and recalled that the Conference Committee had discussed the case in 2003. They emphasized that asbestos was an extremely dangerous product. Several health organizations, including the WHO, had studied and described its harmful effects. Persons affected by asbestos experienced several types of symptoms and died gradually of suffocation. It was a horrible, slow and painful death. Exposure to asbestos also caused other diseases, including lung cancer. At the 2003 Conference, the Government had requested ILO technical assistance to help solve the problems in the implementation and application of the Convention. Between 2003 and 2006, the Office had offered its technical assistance on three occasions, but the Government had never accepted these offers. Moreover, at the request of the Croatian trade unions, an ILO specialist in occupational safety and health had carried out a study on the situation in the country and made a number of recommendations. In its latest observation, the Committee of Experts mentioned several problems which persisted in the country. With regard to the measures taken to prevent and monitor health risks due to occupational exposure to asbestos and to protect workers against such risks, it had noted that the situation in the Salonit factory had not improved, but indeed had deteriorated. It had also expressed deep concern at the fact that the conditions in the Salonit factory were not only putting the lives of workers at risk, but also those of the population living nearby. The Committee of Experts had noted that labour inspections were not effective and that inspectors did not have the appropriate technical equipment to measure asbestos levels in the workplace. Furthermore, the Government had not provided any detailed information on the manner in which inspections were carried out, their frequency, quality and the equipment used by the inspectors to measure asbestos levels in the Salonit factory.

With regard to the disposal of waste containing asbestos, the Committee of Experts had noted that, despite the decision in July 2004 by inspectors requiring the employer to temporarily cover stored asbestos with a waterproof tarpaulin, and contrary to the information provided by the Government, waste containing asbestos was still stored in the open air on the Salonit factory premises. Finally, the Committee of Experts had noted that the competent authorities had not made sufficient efforts to identify all persons, including current workers, former workers and people living in the neighbourhood of the factory, who might have come into contact with asbestos and risked contracting an asbestos-related disease. The oral and written information provided by the Government representative described a certain degree of progress; progress, however, which could not be verified by our Committee and with regard to which the Worker members, based on information from the Croatian trade unions, had serious doubts. The Government had neglected social dialogue regarding this matter. Indeed, the social partners had not been consulted regarding the measures described by the Government. Moreover, according to the Government, asbestos production had been halted because it was impossible to sell it on the market. This raised a question: would asbestos be produced again if demand increased? Would it not be more responsible and reasonable to halt production due to the obvious health risks for workers and the neighbourhood, and the violation of Convention No. 162? It was a very serious problem which required an immediate solution. The Worker members indicated that close dialogue with the social partners had to be established and that legislative measures needed to be taken to counter the harmful effects of asbestos, not only for the workers still employed in the factory, but for the future, as the harmful effects of asbestos exposure only emerged after several years.

The Worker member of Croatia stated that the Articles of the Convention were currently being breached, even though its observance was obligatory because it had been incorporated into the Croatian legal system. Nevertheless, the necessary laws and regulations had not yet been adopted, as noted in paragraph 3 of the observation of the Committee of Experts. He emphasized that the trade unions in Croatia had been advocating an absolute ban on the use of asbestos as a raw material and the development of an overall solution for the victims, including: severance payments for workers still working at Salonit-Vranjic, the only factory that was still using asbestos; the payment of compensation to workers who suffered from asbestos-related diseases, or to their families if the worker had deceased; medical examinations for all those confirmed to have been exposed to asbestos every three years for the next 40 years; more favourable retirement entitlements for those who had been exposed to asbestos; and compensation for damages for inhabitants suffering from asbestos-related diseases. Furthermore, there needed to be an overall consolidation and disposal of asbestos waste dumps including management for all other cases of contact with asbestos in the future.

Salonit-Vranjic was the only factory in Croatia still using asbestos and the terrible estimate was that there were 1,700 tonnes of asbestos waste in its premises and workers there were being poisoned everyday. Moreover, the factory only accounted for 10 per cent of the entire asbestos problem in Croatia, and there was also asbestos in other factories, shipyards and construction companies that had used asbestos. There was no systematic register of diseased persons, so it could only be estimated that, in Croatia, there were approximately 45,000 people who had been temporarily or permanently exposed to asbestos since 1960. As of 1990, some 450 workers had been reported as suffering from asbestos-related diseases, of whom around 200 had died. At least an additional 1,000 to 1,500 of today's workers were estimated to be suffering from diseases caused by asbestos. The emergence of symptoms could be deferred for up to ten years following exposure, making the responsibility of the State as the previous owner of Salonit-Vranjic greater than it seemed. He affirmed that several provisions of the Convention and, particularly, Articles 12, 14, 18, 19, 21 and 22 were being violated. The national legislation did not contain laws and regulations to apply the Convention. There was a draft law to ban the production and sale of asbestos products and provide for means for the restructuring of asbestos production into asbestos-free production, but this draft legislation had never come into force. The list of toxic substances, the production, marketing and use of which were prohibited, effective as from 1 January 2006, included asbestos in its first version, but the reference to asbestos had been removed from the revised version. The Government had promised to make the majority of the relevant draft legislation available for public debate by 1 June 2006. It had also promised that Salonit-Vranjic would be closed by the end of June 2006, but the coordinating body established for that purpose did not include the social partners. He expressed the hope that social dialogue and political awareness would finally lead to the commencement of action to resolve the asbestos problem in Croatia.

He recalled that the Government had opened negotiations for accession to the European Union (EU). This process included an analysis of the harmonization of the national legislation with the *acquis communautaire*, including those relating to occupational safety and health. An impact assessment had shown that action to address the situation of the Salonit plant would cost around 70 million kunas, but this analysis had not taken into account the costs of removing materials that contained asbestos and were built into production facilities, plants, ships, carriages, etc. The Government had stated that the country would not have difficulties in transposing the *acquis communautaire* in this field. However, the Croatian trade union movement seriously doubted the Government's assessment of the situation and the efforts that were necessary. The case of Croatia had been included in the preliminary list of individual cases which the Government had received in advance. He therefore regretted that the Government had not considered discussing the case nationally with the social partners. He indicated that such disregard of social dialogue was common, but was particularly serious in the case of asbestos. Although Convention No. 162 was not one of the ILO's fundamental Conventions, each Convention became fundamental if it was not implemented because what was at stake was human rights, commitments to international law and the achievements of civilization. The labour inspection for concentration of asbestos fibres in the air relevant to the case had taken place almost two years ago, in July 2004. Production at Salonit had now been halted because there was no demand for its products. It was to be regretted that it was only for economic reasons that production had been halted. He emphasized that workers were still working at the factory at that very moment. Failure to comply with the Convention amounted to a failure to respect human health and dignity.

The Worker member of Austria stated that the facts of the case spoke for themselves. The situation was a matter of great concern. It was vital to urge the Government to take measures that were sufficient to give effect to the recommendations made by the Committee of Experts. The Government had a dual responsibility in this case, firstly to adopt legislation that gave effect to the Convention, and secondly as the former owner of the Salonit factory. Clearly, the case involved a responsibility from the past, which was all the more important because the substances in question were highly dangerous. Those who were exposed included those who worked directly in the production and processing of asbestos and products containing asbestos and those who lived in the vicinity of the respective enterprises. They ran the risk of malignant tumours and serious disease, resulting in a terrible death. While there might be an appropriate legal framework to

address the problem, what was of concern was its implementation in practice. Action needed to be taken immediately. The victims had a right to effective protective measures. If nothing was done, more and more people would be affected. It was therefore a matter of great frustration that the Committee had to address the case once again. What was needed was not just protection, but also post-exposure measures in the form of a coherent and consistent health plan to monitor potential victims and provide the necessary care for those who had been contaminated. He drew attention to the conclusions drawn in the context of the process of accession to the EU, where the Government and the European Commission appeared to have concluded that there was no problem of compatibility with the respective European regulations. However, he understood that there was a close correspondence between the requirements of the Convention and the provisions of EU legislation. If Croatia was not complying with the Convention, it could not be in conformity with EU legislation. Experience, including that of his own country, had demonstrated that this was a problem that could only be solved effectively with the full involvement of the social partners and national stakeholders. He therefore called upon the Government to engage in broad dialogue at the national level on the subject of how to deal with the very serious problem of asbestos faced by the country so that action could be taken to prevent any more asbestos-related diseases from occurring and to provide the necessary care and assistance to the victims.

The Government representative thanked the members of the Committee for their comments and reassured the Committee that the Government favoured tripartism to solve the problem and would bring together all the relevant partners as soon as possible. The Parliamentary Committee for Labour, Health and Social Affairs had decided to hold a session in that factory to be able to better appreciate the situation. According to the data provided by the Croatian Institute of Public Health, 297 cases of asbestosis had been found between 1990-2005. As a consequence of mesotomia, 37 persons died in 2000, 30 in 2001, 45 in 2002, 27 in 2003 and 38 in 2004. The draft ordinance on the protection of workers exposed to asbestos would be sent to the ILO in the near future. It was expected that the ordinance would be adopted by the end of 2006. It was regretted that it had not been possible yet to benefit from technical assistance for reasons beyond the Government's control. However, the Government was committed to cooperate with the ILO on these matters.

The Employer members thanked the Government member for the detailed information. However, it was still insufficient to ascertain the degree of compliance in law and in practice with the provisions of Convention No. 162. He expressed concern that, in spite of urgency that dated back three years, measures had not been taken to ensure full compliance with the Convention. The Employer members urged the Government to send detailed information that would permit effective verification that the conditions of workers exposed to serious health risks were in compliance with the provisions of the Convention. They asked that the means be made available to labour inspectors to allow them to measure the amount of asbestos as well as to ensure protective measures for workers, such as clothing and sanitary installations. They called upon the Government to establish effective systems of written information as well as adequate training for all workers in contact with asbestos. They considered that the Office should offer its assistance to the Government to allow it to meet its obligations regarding the Convention and requested that a high-level contacts mission visit the country to follow-up on this case.

The Worker members expressed the hope that the Government would work closely with the Office and the social partners in order to reach a solution and also to take measures as a matter of urgency to address and remedy all aspects of the case at hand. They felt that a lot of time had been wasted and that it was high time that the Government received a high-level direct contacts mission with a view to introducing measures, which would allow for the Convention to be fully implemented. Any further deterioration of the situation would be totally unacceptable.

The Committee noted the oral and written information provided by the Government representative and the discussion that followed.

The Committee recalled the previous discussion and conclusions adopted in this Committee in 2003, as well as the comments of the Committee of Experts in 2004 and 2005.

The Committee, while regretting the previous limited response to the calls for urgent action in this area, noted the following information provided by the Government: that a ban on the production, marketing and use of certain asbestos fibres, including chrysotile, had been in force since 1 January 2006; that in the context of a labour inspection conducted from 15 to 17 May 2006, it had been determined that production had ceased at the Salonit-Vranjic factory site; and that, as part of an effort to resolve the asbestos problem through an integrated solution, the Government had set up for that purpose an inter-ministerial body coordinating the activities of three relevant ministries. It further noted the information that, at a meeting in January 2006, this inter-ministerial body had decided to prepare draft laws on Meeting the Claims of Workers Occupationally Exposed to Asbestos, amending the List of Occupational Diseases Law, as well as on Special Conditions for Acquiring Entitlements from Retirement Insurance for Workers Occupationally Exposed to Asbestos. It also took note of the information that proposals had been requested concerning appropriate measures to encourage the introduction of new technologies for asbestos-free production and that a recovery programme had been commissioned for repairing the environmental damage caused to the factory compound of the Salonit d.d. and the Mravinacka Kava dump site.

The Committee noted, however, that the Government did not provide any or very limited information regarding the volume of the remaining stocks of asbestos in the country and how to handle them in a safe manner; the extent of possible occupational exposure to asbestos in other workplaces in the country; the actual and required procedures for providing relevant information to workers on work with hazardous products; the current status of future legislation concerning the commercialization of asbestos products; the required and actual frequency of labour inspections, the manner in which labour inspection was carried out and the technical equipment made available to the labour inspectors; the actual and planned handling of asbestos waste; as well as the consultations carried out with the social partners on the measures to be taken including on the draft legislation.

In view of the time that had already elapsed and the serious nature of the situation, the Committee invited the Government to accept, as a matter of urgency, a high-level direct contacts mission with a view to verifying the situation "in situ" and to follow-up on this case. It also requested the Government to enter into effective consultations with the more representative employers' and workers' organizations regarding measures for an effective application of the Convention in both law and practice. The Committee further requested the Government to send a full and comprehensive report, to the next session of the Committee of Experts containing information on measures taken to bring its legislation in line with the Convention, on the situation of workers that might still be exposed to asbestos, and detailed information on all points raised by the Conference Committee and the Committee of Experts. The Committee expressed the firm hope that it would be able to note tangible progress in the near future.

The representative of the Secretary-General subsequently announced that the Government of Croatia had accepted the visit of a high-level direct contacts mission, as proposed by the Committee.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Paraguay (ratification: 1993). **A Government representative** stated that in the Government's report to the Committee of Experts on the application of the Convention, which had been sent in April, it had not been possible to reply in full to all the comments made by the Committee of Experts, since the Government had not received the necessary information from all relevant bodies. With regard to the observation of the Committee of Experts, he explained that the Act concerned had never entered into force, as it had been vetoed by the Executive precisely because it was considered to contain serious deficiencies and that several points had to be improved. He affirmed that the indigenous issue was very critical, significant and sensitive for Paraguayans and the Government, and emphasized that, although it was sometimes mistakenly believed that there were two populations in his country, the whites and the indigenous, virtually the whole population was of mixed race and spoke both Spanish and Guaraní. While the purely indigenous population was not very large (only 100,000 out of six million), caring for and protecting this portion of the population was an important concern for the Government. His Government was therefore ready to listen to and accept the Committee's recommendations so that the situation of the indigenous population could be dealt with better. Finally, he read out a message in Guaraní for the workers and employers of his country, in which he called on them to inform the Government of any problems of application, but to also work together with the Government to resolve them.

Another Government representative indicated that in addition to her oral presentation, a more detailed written report would be submitted. As to the 2003 Conference Committee discussion, she stated that the Government was taking the matter much more seriously. She reported that, with ILO technical cooperation and cooperation from the Declaration, a field study was being produced in compliance with Convention No. 29 that addressed the situation of indigenous workers in the western region of the country, the Chaco Paraguayo. This study would be published in her country in September 2006 which reflected the fact that the situation of indigenous peoples had much to do with cultural issues. The document would be analysed at tripartite seminars held in the capital, Asunción, with the participation of employers, workers, indigenous community leaders and government civil servants. She added that the Ministry of Justice and Labour had dispatched labour inspectors to the region to review the situation, and in March 2006, in the presence of ILO officials, a regional labour office had been opened in Mariscal Estigarribia, at the centre of Chaco Paraguayo, to deal with cases reported. Those in charge of this office also took part in radio programmes broadcast across the region, relaying features on workers' rights and the Labour Code.

Concerning Act No. 2822, which was intended to replace the Paraguayan Indigenous Institute (INDI), the draft law had been par-

tially vetoed by the President. It had therefore been shelved and the INDI structure and functions remained in force in conformity with the provisions of Act No. 904/81. INDI was the body responsible for coordinating indigenous policies in Paraguay, and was responsible for developing and promoting, together with indigenous peoples and public and private organizations that worked with them, new policies based on the indigenous vision of meeting the challenges of poverty and providing a structural solution to the problems faced by indigenous peoples. INDI was also responsible for developing projects that were related to indigenous issues. With respect to the request for information on Articles 2 and 33 (coordinated and systematic policy), 6 (consultation), 7 (participation) and 15 (consultation and natural resources), she indicated that responses to these questions would be found in the written report which would be submitted to the Committee. The Government intended to tackle this issue and requested the assistance of the social partners to move forward the work required, to respond effectively to the situation of indigenous peoples and to find the answers that the case deserved.

The Worker members, while appreciating the explanations provided by the Government, recalled that the Conference Committee had already discussed at length, in 2003, the case of Paraguay related to the Convention and that the case had been taken up again in a footnote by the Committee of Experts, requesting the Government to provide detailed information to the Conference. The Workers regretted that the Government had made no significant progress despite the ILO technical cooperation that had been provided in March 2005, although the Government itself had requested technical cooperation in 2003. The detailed report on the application of the Convention, requested in 2004 and 2005, had not been received. A report could have listed the measures taken to give effect to the recommendations made in 2003. A letter had been sent by the Office to the Government on 8 June 2005, but remained unanswered. The Government, however, had stated on several occasions that it placed great importance on the ILO and its standards-related and technical cooperation activities. The Government representative had admitted the positive and constructive effects of the Committee of Experts' comments on national legislation. Recognizing the delay in the information provided by her country, the Government representative had reiterated the authorities' willingness to meet their obligations, mainly regarding the application of international labour standards. But the Committee of Experts had noted in its report of 2005 that communication between the Office and the Government was limited. In 1997, it noted in its observations on the application of the Forced Labour Convention, 1930 (No. 29) that there was proof of debt bondage among indigenous communities in the Chaco region. The Government had declared that investigations would be carried out. In its 2003 report on the application of Convention No. 169, the Committee of Experts noted that the Government had supplied no information on the subject and, at the Conference, the Government representative had explained that it was impossible to carry out such investigations because of the geographical size of the country. The Worker members were therefore obliged to refer to more concrete and current information provided by the ILO report of June 2005 concerning the special action programme on forced labour, entitled "Debt bondage and marginalization in the Chaco Paraguayo region". The indigenous population of around 100,000 people represented 1.7 per cent of the total population of Paraguay and was especially vulnerable. In urban areas, it lived in worker communities. The indigenous peoples were deprived of their land and 51 per cent were illiterate. They constituted a source of cheap labour often subjected to debt bondage. The modernization of the Paraguayan economy had led to a reduction in demand for indigenous labour, but had not brought an end to abuses. Unemployment was endemic. The rate of indigenous workers in the construction sector, which used to be 100 per cent of the workforce had now come down to 30 per cent. The best-paid jobs were given to non-indigenous workers. Indigenous workers were thus forced to accept jobs remunerated at sub-minimum wage rates. The most serious problem was the expulsion of indigenous peoples from their lands in the Chaco, mainly following land seizures by landowners who came to grow soya beans. The indigenous peoples migrated to the capital where they lived in absolute misery.

The Committee of Experts had noted in its report that Act No. 2822 on the status of indigenous peoples and communities had been voted by the National Congress on 3 November 2005. But the Government representative had announced that this act had not been approved because of serious shortcomings. The Worker members requested the Government to clarify the current legal situation and to indicate which law was actually in force and, if a new draft law was in preparation which took into account the consultation of indigenous peoples, as foreseen in Articles 2, 6 and 33 of the Convention. In substance, the Worker members urged the Government to meet its obligations with respect to the ILO supervisory bodies and forward detailed and complete reports without delay containing all information that was useful to the Committee of Experts so that it could examine and evaluate the action taken by the Government to apply Convention No. 169. They especially requested detailed information on the current legal situation applicable to indigenous peoples and measures taken by the Government to ensure that consultations took place with indigenous communities as foreseen by Article 6 of the Convention. They requested that solutions be found to bring the legislation into conformity with the Convention and that the ILO should propose technical assistance to Paraguay, especially through the ILO project for promotion of policy on indigenous and tribal people (PRO-169) and activities related to supervision of ILO standards with the participation of the social partners.

The Employer members stated that the fact that the Government had appeared before the Committee and provided some written and oral information constituted some progress in this case. They also stated that the Government could have avoided the discussion of the case by providing timely reports to the Committee of Experts. While the Employer members believed that this was essentially a serious case of non-reporting, they also concurred with the Worker members that there was not full implementation of the Convention relating to indigenous and tribal peoples. In particular, the Government had indicated that the revised law had not taken effect. The situation in the country for indigenous and tribal peoples remained serious, as they continued to be among the most disadvantaged in society.

The Worker member of Paraguay requested the Government to provide more detailed reports on the application of the Convention. He regretted that the report presented by the Government contained additional information to which the workers had no access. As regarded the draft law which the President of the Republic had vetoed, he stated that the workers had not taken part in any consultations during its drafting and expressed the hope that such a situation would not be repeated in future. He asked the Government to provide copies of the studies carried out to enable workers to participate, in consultation with the indigenous peoples, in the resolution of this old problem so that the Convention could be fully applied. He also asked the ILO to continue its technical cooperation with the Government on these issues.

An observer representing the Latin American Workers Central (CLAT) stated that Convention No. 169 was systematically and permanently violated. The Chaco was home to 15 of the 20 ethnic groups identified in the 2002 indigenous census. Data from the census showed that the working conditions of seven of these groups were dramatic. These indigenous communities were discriminated against and suffered from debt servitude in urban and rural areas. In fact, the discrimination against indigenous workers experienced in previous years continued to be a reality. There was discrimination in wages that were much lower than for non-indigenous workers, and even in the fact that indigenous peoples were not allowed to use water wells. Temporary workers saw their wages systematically reduced while there was overpricing in foods that they were obliged to purchase at the only community store available, where prices were fixed by the store owner who was also the employer. Many were forced into debt. The employer used this method as a means of forced labour, or debt bondage, to which not only the worker but his whole family was subjected. Workers and their families enjoyed no social protection or education or health coverage. As the Guaranís themselves said in their own language: *El Tembi ûre ñamba'apo ñande tembiguaivêva* ("We work for food alone and are the most deprived".) The speaker asserted that although Paraguay had ratified the ILO Conventions on forced labour and on indigenous peoples, these Conventions were systematically violated with the full knowledge of the authorities. The National Constitution, however, clearly stated in article 10 that slavery, debt bondage and trafficking of people were proscribed. The violations of the law also extended to the standards that provided legal guarantees for land ownership by indigenous peoples. In fact, article 64 of Chapter 5 of the National Constitution provided for communal land ownership by indigenous peoples. However, indigenous peoples were expelled and forced to abandon their natural habitat by landowners and investors who were involved in soya bean agriculture, using toxic fertilizers indiscriminately that were dangerous to both human beings and the soil, resulting in unsuspected damage to the Guaraní heritage.

The Employer member of Paraguay stated that the question of indigenous peoples was being examined by the employers in Paraguay. He admitted that there were situations in which the indigenous population was submitted to debt bondage. He nevertheless stated that these were isolated cases for which lack of communication was responsible and which took place in remote locations unreachable by the labour inspection. The facts referred to by other speakers did not represent the Paraguayan employers' vision. Employers' organizations were in fact working together and were determined to improve the situation of indigenous peoples in Paraguay.

The Government representative was grateful for the comments made and apologized for the late dispatch of the report on the application of Convention No. 169. She repeated that there was currently no draft law under discussion and that Act No. 904/81 was still in force. She stated that in 2006 all information in response to the Committee of Experts' concerns would be forwarded and would be duly communicated to the social partners. She reiterated the Government's intention to address the issue in a tripartite framework. Thus a seminar would take place in September 2006 in order to disseminate the document entitled "Debt bondage and marginalization of rural establishments in Paraguay". The Government also intended to set up a tripartite committee on indigenous peoples' issues.

The Worker members stated that, while they appreciated the additional information provided by the Government, they nevertheless remained concerned over several issues. They requested the

Government to respect its obligations towards the ILO supervisory bodies and to provide detailed reports containing all necessary information to the Committee of Experts without delay, so that it could examine and evaluate the measures taken. In particular, they requested the Government to provide detailed information on the current legal situation, including on the Law on Indigenous Peoples of 1981, which, according to the Government, was still in force.

The Employer members stated that the Government had given some information indicating that this case was moving forward. However, they urged the Government to ensure that law and practice was in conformity with the Convention and to provide all information requested by the Committee of Experts.

The Committee noted the statement of the Government representative and the ensuing discussion. It recalled the previous examination by the Committee in 2003, and the concerns expressed by the Committee of Experts that no report had been received to follow up on the effect given to the recommendations made on that occasion, and that there had again been a failure to provide a detailed report in 2004 and 2005. The Committee noted that the Committee of Experts had also raised the lack of a reply by the Government to allegations concerning the application of the Convention by the National Federation of Workers (CNT).

The Committee noted the oral and written information provided by the Government representative, in particular regarding the recent opening of the Regional Labour Office in Paraguayan Chaco, the Presidential Veto of Act No. 2822, and the assigning to the National Institute of Rural Development (INDERT) the responsibility for reducing demands on indigenous lands in order to prevent intrusion on those lands. The Committee also noted the Government's commitment to establish a tripartite committee to follow-up on ILO matters. The Committee further noted that the ILO in the context of the follow-up to the Declaration on Fundamental Principles and Rights at Work would publish a detailed report in September 2006, covering the situation of indigenous peoples in Paraguay, which would be discussed in a tripartite meeting.

While noting the Government's indication that it had provided a report to the Committee of Experts in March 2006, the Committee requested the Government to provide full information concerning the matters raised by the Committee of Experts in its next report, including regarding the observations made by a workers' organization. The Committee stressed the importance of providing information on the practical application of the Convention, in particular regarding the various aspects relating to recruitment and conditions of employment as required pursuant to Article 20 of the Convention, and the number of indigenous rural workers in the country, specifying the number of such workers declared to the administrative authorities. The Committee recalled the obligation of the Government to consult and ensure participation of the indigenous peoples with respect to measures that might affect them. The Committee reminded the Government that non-compliance with the obligations arising from article 22 of the Constitution hampered the effectiveness of the ILO supervisory machinery. The Committee, therefore, urged the Government to adopt measures to enable it to send on a regular basis the information requested by the Committee of Experts, and in particular to respond to the outstanding issues raised since 2002. The Committee also suggested that the Government should consider requesting further ILO technical assistance regarding the application of the Convention.

Convention No. 182: Worst Forms of Child Labour, 1999

Philippines (ratification: 2000). A Government representative stated that the Government was making all efforts to comply with the Committee of Experts' requests and would provide information in a subsequent report. He could not deny that there existed a child labour problem in the Philippines, but the Government had always affirmed the principles of the Convention and the country had a strong rights-based system. He was pleased that this was recognized by the Committee of Experts. The Government supported the time-bound programme, signed in 2002, which was a priority concern. The IPEC project aimed at meeting national goals of a 75 per cent reduction in child labour by 2015. The strategic components featured direct action in six target groups in six regions. The institutional framework was in place at both national and regional level and a total of over 10,000 child workers would be withdrawn and educated. As regarded child soldiers, there was a Government task force at national level and the strategy was based on putting the children into education. Three hundred children would benefit. The action plan was being implemented by the Department of Labor and Education. With respect to actions taken, the speaker mentioned the fact that over 2,000 children had been rescued and rehabilitated and that seven criminal cases were being pursued for trafficking. In 2004-05, 100,000 children in tobacco agriculture had received assistance and had been put into school. Their parents were also receiving financial and other assistance. The social partners were also supportive on the elimination of child labour and had helped rescue 1,500 children from domestic labour and 1,200 children from trafficking. Employers' organizations had enhanced their corporate social responsibility programmes and produced documentation on best practices. Trade unions were working to deepen their involvement. The speaker recognized the need for more concrete programmes, but the scale of the problem required outside support. The Philippines would continue to chip away at the problem until it was solved.

The Worker members stated that the Philippines had a major child labour problem. The Government had enacted legislation that helped achieving conformity with the Convention and some progress had also been made in eliminating child labour in practice. The Philippines trade union movement and the Visayan Forum made important contributions in this regard. An agreement had been reached at the National Domestic Workers Summit on an agenda to address child domestic labour while the birth of a new trade union of domestic workers demonstrated the importance of self-organization of informal economy workers for the struggle against child labour. Several trade unions were carrying out action programmes to eliminate child labour. The present case had three key elements: (1) sale and trafficking of children, including for domestic work and sexual exploitation; (2) compulsory recruitment of children for use in armed conflict, and (3) hazardous work of domestic child labourers. The Worker members regretted that the observation did not provide any information on child labour in mining and quarrying, production of fireworks, deep-sea fishing or work on sugar plantations, activities included in the Memorandum of Understanding with the ILO. One of the problems in measuring progress in eliminating child labour was that no recent statistics on its prevalence were available. In addition, the available data concerning enrolment rates in primary and secondary school was inconsistent. In respect of sale and trafficking of children, the Worker members were concerned that the still pervasive view among parents that child domestic work was safe for children was making them easy prey for traffickers. They also indicated that a large number of victims of trafficking who had been promised domestic work were forced into prostitution and subjected to debt bondage. Two United Nations human rights treaty bodies had expressed profound concern about weak law enforcement, the lack of preventive measures and the lack of measures to assist and support victims. The Committee of Experts had requested the Government to redouble its efforts to address these problems and to provide detailed information on any action taken. As far as the use of children in armed conflict was concerned, the Worker members saluted the Government for banning the recruitment of children under the age of 18 into the State's armed forces. Other countries, including some major industrial countries, should follow this example. However, non-state actors were still recruiting children. According to Government estimates, some 10,000 alone were in the New People's Army, others were part of the Moro Islamic Liberation Front. Despite the focus of the United Nations Development Assistance Framework (UNDAF) on children in armed conflict, only one action programme involving 300 children had been implemented. Further information, as requested by the Committee of Experts, was urgently required.

The Worker members noted that the Government remained responsible for preventing and ending forced recruitment of children into illegal armed groups, in accordance with its international obligations. The Government had a direct influence on government-aligned paramilitary groups, and should oblige them to end this practice. As peace was a prerequisite for a solution, the Worker members hoped for further progress in the peace talks. Turning to the issues of child domestic work, the Worker members noted that the Government's 1999 Order on this subject indicated certain types of hazardous work – long hours, work at night, confinement to the employer's premises, as described in Recommendation No. 190 – should be prohibited for children under the age of 18. These types of hazardous work described well most child domestic service. There was incoherence in banning work with those characteristics for all under 18 and, at the same time, allowing domestic service for children over 15, so long as they received elementary education. Education was a blessing, but full-time work and education were incompatible. Moreover, education per se did not make hazardous work safe. There were at least 1 million child labourers in the Philippines, 5 per cent of the country's entire school-aged child population. Almost all child domestic labourers were girls. It was therefore fortunate that the discussion of the Global Report on child labour had led to a consensus that tackling domestic service of girls should become a key priority for IPEC and the ILO constituents. The Worker members called for extensive coverage of labour inspection to bring hidden child labour to light and regretted that the Committee of Expert's observation did not offer any information about the activities of the labour inspectorate in the Philippines, or measures to strengthen it. It was further necessary to integrate the struggle against child labour into national economic and social policy, guided by tripartite consultation. The lack of legal provision remained a major concern. For instance, existing provisions included definitions of service, which included ministering to the personal comfort and convenience to the employer's household. New legislation which was in compliance with the Convention needed to be adopted and effectively implemented. Finally, the Worker members concurred with the Committee of Expert's requests for clear and comprehensive information on the implementation and effect of the measures taken to address all these matters.

The Employer members were pleased that the Government had

provided further information on the measures taken to apply the Convention. They highlighted the strong international consensus on the eradication of the worst forms of child labour, which was a daunting task. They were encouraged by the latest Global Report on child labour which found that overall some progress had been made in this regard. Numerous legal provisions had been enacted by the Philippines to prohibit sale and trafficking of children under 18 years of age for labour or sexual exploitation. Nevertheless, the Employer members expressed concern that child trafficking for domestic work and sexual exploitation continued to occur in practice and stressed that Convention No. 182 required immediate and effective measures to be taken to eliminate all worst forms of child labour. While initiatives such as the Visayan Forum and efforts by the social partners were welcome, the Government had to continue to take measures against child trafficking, as long as the problem existed. The Employer members called on the Government to ensure that the provisions of the Convention were applied in practice and, in this regard, to provide further information on the measures taken to ensure anti-trafficking legislation was enforced and on the sanctions for the offences provided for in the law. They recognized that the national legislation prohibited the recruitment of children under the age of 18 years into the armed forces and other armed groups, as well as the recruitment, transportation or adoption of a child to engage in armed activities. However, children continued to be used in armed conflict by government-aligned paramilitary groups and opposition forces. They noted the programmes carried out with the assistance of ILO/IPEC, but insisted that the Government should provide full information to the Committee of Experts regarding the current state of the use of children in armed conflict and any progress made in eliminating this serious problem.

The Worker member of the Philippines observed that the Committee of Experts' 2005 observation took note of several measures taken by the Government to apply the Convention. Legislation outlawing the trafficking of children for labour and sexual exploitation had been passed, a detailed list of hazardous work that children under the age of 18 were prohibited from performing had been drafted, and the Government had also cooperated with the social partners and other stakeholders to address child labour in several sectors, including mining. However, the worst forms of child labour still persisted. Children continued to perform hazardous work in mines, on plantations, and in deep-sea fishing. The steps taken so far were insufficient to fully eliminate these worst forms of child labour, especially in the light of the magnitude of the problem and the Government's limited resources. The speaker member recalled that the underlying cause of child labour was poverty. It was, therefore, necessary to also address the problem by generating decent jobs and alternative means of livelihood for the parents of child labourers. The unions would continue to offer assistance in joint efforts to remove children from the worst forms of child labour.

The Government member of Sweden, speaking also on behalf of the Government members of Denmark, Finland, Iceland and Norway, expressed concern about the continued trafficking of women and children, both within the country and across its borders. She recognized that legislative measures had been taken and that the Committee had today been assured of the determination of the Government to eliminate the trafficking. Still, she shared the concern expressed by the UN Human Rights Commission that these measures were still insufficient and requested the Government to redouble its efforts and take further immediate measures, in particular for domestic workers and with respect to commercial sexual exploitation, and also to provide detailed information on progress made. She further noted that numerous children continued to be recruited to take part in armed conflicts and urged the Government to adopt concrete and effective measures to put an end to such practices and to provide detailed information in this respect.

The Worker member of Indonesia stated that the main cause of child labour was not only poverty but also that many people, especially among the rural poor, thought that work was an integral part of a child's development, and he asked the Government to address this issue. He further stated that the majority of child labour occurred in agriculture in rural areas where access to education was very limited. He noted that child labour used in conditions of bonded labour in the sugar industry of the Negros region had been increasing on the average by 4 per cent every year , and that children employed as domestic workers could be found in three out of ten households in the Philippines. In other words, 3 million households had children working for them. The speaker advocated the adoption of a holistic approach to combat child labour through providing educational incentives, for instance of a financial nature, to allow families to be less dependent on their children for income. He concluded by asking the Government to provide more detailed information on measures adopted and the results obtained, in collaboration with the social partners, in order to eliminate the worst forms of child labour.

The Employer member of the Philippines acknowledged that the legislation in place had strengthened the overall framework for addressing child labour and was fully supported by the tripartite partners, a fact which was reflected in their cooperation, collaboration and networking to combat the problem. He noted that child labour was both a cause and an effect of poverty, the high population growth which led to high unemployment, the Government's inability to provide basic services to all, such as education and health services, and the inability of parents to provide their families with basic needs. This resulted in under-skilled and unqualified human resources, which affected the country's economic development. The speaker stated that for the past years awareness-raising activities had been carried out through numerous programmes and projects, including specific guidelines for a child labour-free and child-friendly business environment and pilot small-scale interventions in different industries, such as the sugar industry, mining and quarrying, pyrotechnics, and the hotel and restaurant industry, with a "return-to-school" scheme. He concluded that these measures were certainly modest, but assured that the employers of the Philippines were committed to pursuing, together with the social partners, the combat against child labour.

The Government representative reiterated that more detailed information would be provided and noted the multiple issues which needed to be addressed, such as an evaluation of results obtained from adopted measures, and the dissemination of information, including the applicable legislation. He stated that child labour was symbolic of the struggle faced by many developing countries. His country would seek technical assistance in its efforts to eradiate child labour.

The Worker members believed that both the Government and the trade unions had made serious efforts to apply Convention No. 182. Yet more needed to be done to prohibit and eradicate child labour and to bring law into line with the Convention. It was not poverty alone or simply that that was a cause of child labour, but rather decent work deficits and social injustice. There were also important gender, human rights and other dimensions as well. Moreover, other poor countries, such as some federal states in India, had managed to effectively address child labour problems. Even the poorest parents were willing to send their children to school rather than work if school was free. The Government should seek technical assistance. It should also raise awareness on the problems of street children rather than criminalizing them. Finally, they asked for a more detailed report than the one submitted this year, which was poor in detail. Chipping away at the problem was not enough. The Convention required coherent and urgent action.

The Employer members stated that eradicating child labour was a very complex matter and commended both the Government and the social partners for their collaboration. They encouraged the Government to particularly address the issues of trafficking and the use of child labour in armed conflict and to continue the close collaboration with the social partners in this respect. Finally, they urged the Government to provide detailed information on results obtained in eliminating child labour and the full implementation of the Convention.

The Committee noted the information provided by the Government representative and the discussion that ensued. The Committee noted the information contained in the report of the Committee of Experts relating to the sale and trafficking of children under 18, for purposes of economic and sexual exploitation, both within the country and across its borders, the use of children in armed conflict, and the use of children in hazardous domestic work.

In this regard, the Government pointed out that it was implementing the Convention through various measures and action programmes with the full participation of the social partners, including the adoption of a time-bound programme (TBP) with ILO/IPEC that was ongoing. The Committee took note of the information provided by the Government representative highlighting that the worst forms of child labour were the result of poverty, exclusion and underdevelopment. The Committee further noted that the Government had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO.

The Committee noted that, although various legal provisions prohibited the trafficking of children for labour or sexual exploitation, it remained an issue of concern in practice. The Committee accordingly called on the Government to redouble its efforts and take without delay the necessary measures to eliminate the trafficking of children under 18, in particular for domestic work or commercial sexual exploitation, and asked it to provide information in its next report to the Committee of Experts on progress made in this regard.

The Committee stressed that the compulsory recruitment of children for use in armed conflict constituted one of the worst forms of child labour and that the Government was obliged to take, by virtue of Article 1 of the Convention, immediate and effective measures to secure the prohibition and the elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly requested the Government to indicate the effective and time-bound measures taken for the removal, rehabilitation and social integration of children under 18 involved in armed conflict.

Finally, the Committee noted with concern the economic and sexual exploitation which continued to be experienced by a large number of child domestic workers. The Committee accordingly requested the Government to indicate the measures taken in law and in practice to ensure that work performed in the domestic sector was prohibited for children under 18 years where it was haz-

ardous work within the meaning of the Convention.

The Committee urged the Government to provide, in its next report to the Committee of Experts, more detailed and accurate information on the worst forms of child labour in the Philippines. The report should include, inter alia, the following: copies of or extracts from official documents, including inspection reports; accurate figures for school enrolment and completion; and information on the nature, extent and trends of the worst forms of child labour – including in all sectors covered by the Memorandum of Understanding with ILO/IPEC, in particular, accurate statistics on child domestic labour. Furthermore, the Committee requested the Government to supply detailed information on the measures to ensure the effective implementation and enforcement of the provisions giving effect to Convention No. 182. That information should include data on infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

United States (ratification: 1999). The Government communicated the following written information.

The United States Government submitted its article 22 report on application of Convention No. 182 after the Committee of Experts 2006 report was published. The Government's report dealt in depth with issues that have been raised by the Committee of Experts, as well as by the AFL-CIO and ICFTU. The United States Government has now submitted four article 22 reports, all of which vividly demonstrate the United States continuous commitment both to the provisions of Convention No. 182 and to dialogue with the Committee of Experts. The information below provides a glimpse into the vast efforts currently being undertaken by the United States Government to eliminate the worst forms of child labour, which also serve to implement Convention No. 182. It corresponds to the comments in bold type in the Committee of Experts' observation relating to Articles 3-8 of the Convention.

Article 3(a): Trafficking

The United States leads the world in the fight against trafficking in persons, and anti-trafficking policies and programmes are coordinated at the highest levels of government. The centrepiece of United States government efforts, both domestic and international, is the Trafficking Victims Protection Act of 2000 (TVPA), which enhanced three aspects of federal government activity to combat trafficking in persons: protection, prosecution and prevention. The TVPA increased protection and assistance for victims of trafficking; expanded the crimes and enhanced the penalties available to investigate and prosecute traffickers; and broadened United States activities internationally to prevent victims from being trafficked in the first place. The TVPA also created a mechanism to allow certain non-citizens who were trafficking victims access to benefits and services from which they might otherwise be barred. The TVPA was reauthorized in 2003 and 2005. The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 mandated new information campaigns to combat sex tourism, enhanced anti-trafficking protections under federal criminal law, and created a new civil action that allows trafficking victims to sue their traffickers in federal district courts. The Trafficking Victims Protection Reauthorization Act of 2005 extended and improved prosecutorial and diplomatic tools; provided for new grants to state and local law enforcement agencies; and expanded the services available to victims, including appointing guardians for young victims and providing access to residential treatment facilities. The law also directed the United States Agency for International Development, the State Department, and the Department of Defense to incorporate anti-trafficking and protection measures for vulnerable populations, particularly women and children, into their post-conflict and humanitarian emergency assistance and programme activities.

The TVPA as amended by the TVPRA also requires that the Attorney-General submit an annual report to Congress assessing the impact of United States government activities to combat trafficking in persons. Among other things, the report provides information on the number of trafficking victims who received government benefits and services; the number of investigations and prosecutions of trafficking in persons; support for international anti-trafficking programmes; law-enforcement outreach and training at both the domestic and international level; and public-awareness campaigns. The Attorney-General's most recent report was transmitted to the Committee of Experts for examination, along with other materials that assess United States government activities to combat trafficking in persons. The Committee of Experts requested comments on United States government statistics cited by the ICFTU on the number of trafficking victims in the United States, source countries, and employment of such victims within the United States. Those statistics were based on a compilation of 1997 data, which are now outdated. Since that time, the United States Government has refined its data collection and methodology, and it is currently estimated that 14,500 to 17,500 people are trafficked annually into the United States. While these numbers are lower than previous estimates, the United States Government is no less committed to eradicating human trafficking as an urgent priority.

Article 3(c): Illicit activities

The United States Government's most recent article 22 report provides copies of the federal statutes prohibiting the sale, delivery or transfer to a juvenile of a handgun or ammunition suitable for a handgun, and the penalties for violators.

Articles 3(d) and 4(1): Hazardous work

It is true that the Fair Labor Standards Act sets a lower minimum age for agricultural occupations determined by the Secretary of Labor to be hazardous than for hazardous non-agricultural occupations. However, in reviewing Convention No. 182 for possible ratification, the Tripartite Advisory Panel on International Labour Standards reached the unanimous conclusion, based on the negotiating history of the Convention, that this differentiation was not in conflict with Articles 3(d) and 4(1). It was accepted that these provisions allow governments, in good faith and subject to certain procedural requirements, to establish standards that treat children of different ages differently, and that treat different classes of occupations differently. In the United States view, and in the view of the drafters of Convention No. 182, countries have the discretion – and the responsibility – to consider the actual nature and circumstances of work performed by children and their age. In the United States, laws and regulations relating to the prohibition of hazardous child labour in agriculture are supported by government initiatives to find ways to better protect the health and safety of children working in the agricultural industry. These include programmes to protect farmworkers and their children from pesticides, to educate young workers about safety and health in agriculture, and to prevent injuries among children working in agriculture. Furthermore, federal laws are often supplemented by state child labour laws, many of which have more stringent agriculture standards.

Article 4(3): Examination and periodical revision of the types of hazardous work

In the United States, there are various federal and state laws that protect children from labour that necessarily exploits them and poses a real danger to them. The Hazardous Occupation Orders (HOs) issued by the Secretary of Labor pursuant to the Fair Labor Standards Act (FLSA) constitute the determination of types of hazardous work contemplated by Articles 3(d) and 4 of Convention No. 182. The HOs mentioned in the CEACR observation relating to driving and operating balers and compactors, roofing and handling explosives, were amended on 16 December 2004, along with revisions to the child labour regulations under the FLSA. Copies of the amendments were submitted with the Government's most recent article 22 report. According to its agreement with the Department of Labor's Wage and Hour Division (WHD), the National Institute for Occupational Safety and Health (NIOSH) was tasked with examining issues within the framework of the current Hazardous Orders. NIOSH consequently did not consider the extent to which fatalities and injuries occur despite existing HOs or other federal or state laws. NIOSH also did not consider strategies short of a complete ban on employment. In some cases, the Department of Labor has found that the best strategy for addressing the occurrence of fatalities resulting from activities that are already illegal might be increased focus on safety training, use of personal protective equipment, and strict adherence to recognized safe working practices. The Department of Labor continues to review the FLSA child labour provisions to ensure that the implementing regulations provide job opportunities for working youth that are healthy and safe and not detrimental to their education. As part of that effort, the Department continues to review and consider the NIOSH report's recommendations, including, as the Experts noted, through stakeholder meetings with all interested parties. As a result, the Department anticipates proposing further revisions to its child labour regulations to address several of the NIOSH recommendations, and soliciting additional data and input from the public for consideration of additional revisions.

Article 5: Monitoring mechanisms

Mechanisms exist at both the federal and state levels to monitor implementation of all aspects of Convention No. 182. The Committee of Experts has commented on three particular areas.

National survey on levels of compliance in grocery stores, full service restaurants and quick service restaurants

In carrying out its enforcement authority, the WHD gives child labour complaints the highest priority. In addition, the WHD conducts self-directed investigations, which are not directly in response to complaints, but initiated by the WHD based on its analysis of where child labour violations are more likely to occur. A review of the data regarding the Department's youth employment investigations conducted over the past five years reveals a pattern of increased compliance with child labour laws. WHD investigations demonstrate that a lower percentage of employers are in violation of the youth employment rules, and they are employing a much lower percentage of youth in violation of child labour laws. Also, the investigations show that employers are much less likely to employ youth in violation of the Hazardous Orders. To further amplify child labour enforcement, the Department of Labor initiated efforts to address the problem of repeat violations in three unique industries where the highest proportion of youth is employed – grocery stores, full service restaurants and quick service restaurants. As the result of these efforts, the most recent youth employment compliance surveys demonstrate that compliance has

improved and recidivism rates have dropped.

Measures to eliminate child trafficking and the results achieved

United States government measures to combat and eradicate child trafficking are described elsewhere in this document with regard to Articles 3(a) and 7(2). In addition, the WHD investigators are in workplaces every day and play an essential role in identifying potential trafficking victims and setting in motion measures to help them. All of these efforts pre-date ratification of Convention No. 182 and will continue as long as necessary. The Government will also continue to keep the CEACR informed of measures taken and results achieved.

Measures to ensure the enforcement of child labour laws in agriculture and their impact on the elimination of the worst forms of child labour in the agricultural sector

The United States Government uses every tool available – strong enforcement, compliance assistance and strategic partnerships – to ensure that young agricultural workers have safe and appropriate work experiences. As a matter of policy, the WHD examines child labour compliance in every full investigation that it conducts. Also, as part of its labour standards enforcement responsibilities in low-wage industries, which include agriculture, the WHD is cognizant of and looks for situations in which workers, including young workers, have been intimidated, forced to turn over immigration papers, threatened or held against their will. Where appropriate, the WHD coordinates compliance activities with the states, which also have responsibility for child labour standards. Although, as noted above, child labour violations across industries continue to decrease, violations in agriculture increased last year. As a consequence, the WHD will continue to target youth in agriculture through its self-directed enforcement and will continue to prioritize any child labour complaints received in the agriculture industry. Compliance assistance includes initiatives to ensure that employers and young workers and their parents fully understand United States child labour laws with regard to work in the agriculture industry. The Department of Labor distributes information, by various means and in multiple languages, which details in an easy-to-understand format the requirements for employing youth in agriculture. Strategic partnerships have been established with agricultural associations to disseminate compliance information to employers in the industry, with foreign consulates to advise employees of their rights and the remedies available to them under child labour laws, and with other federal agencies to reduce occupational deaths and injuries to youth on farms. For example, in conjunction with consulates from Mexico, Colombia and Central America as well as other community and governmental organizations, the Department of Labor established the Justice and Equality in the Workforce Program. The programme provides an avenue for non-English speakers to report violations of United States labour laws and channels complaints to the appropriate agency.

Article 6: Programmes of action to eliminate the worst forms of child labour

Measures relating to the Federal Inter-Agency Working Group on Young Worker Safety and Health

The United States Government has developed an array of programmes to educate all those who affect youth employment – employers, parents, teachers, government agencies, and the youth themselves – about United States child labour laws and the importance of compliance. The Federal Inter-Agency Working Group on Young Worker Safety and Health is now the "Federal Network for Young Worker Safety and Health", and it has expanded to include over 30 participants representing 11 federal agencies. The ultimate goal of FedNet is to prevent occupational injuries and illness among young workers by: increasing awareness of young worker occupational safety and health among key community players and young workers as they enter the workforce; fostering education, training and outreach to promote young worker safety and health; enhancing federal initiatives that create relationships with small businesses, trade associations, and other organizations that employ young workers; and promoting resources that enhance employer compliance and knowledge of federal and state regulations related to young workers. FedNet provides a forum for discussion, sharing resources and reducing redundancy among federal agencies. Following a review of injury/illness and fatality data, FedNet participants selected two areas of emphasis for 2004-06: motor vehicle safety and workplace violence prevention in retail settings.

Achievements and impact of the Child Exploitation and Obscenity Section, especially with regard to combating the commercial sexual exploitation of children under 18

The Child Exploitation and Obscenity Section (CEOS) of the Department of Justice's Criminal Division was created in 1987, and has a long history of prosecuting cases involving the commercial sexual exploitation of children. CEOS enforcement efforts have been significantly strengthened in recent years with the passage of the TVPA and TVPRA, mentioned above, as well as the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003. The PROTECT Act, for example, allows law enforcement officers to prosecute American citizens and legal permanent residents who travel abroad and commercially sexually abuse children, without having to prove intent to commit the crime. CEOS concentrates its efforts on investigations that have the maximum deterrent impact, and has expanded its efforts to include new fronts in the battle to protect children from exploitation, such as the misuse of computers and advanced technology. In the past two years CEOS has increased its caseload by more than 445 per cent and has increased its focus on producers and commercial distributors of child pornography. In addition to its enforcement activities, CEOS provides advice and training on child exploitation to prosecutors, investigators and judges at the federal, state, local and international levels. CEOS also works in partnership with other agencies to identify the victims of child sexual exploitation so they can be rescued and protected from further abuse. The Government has provided the CEACR with detailed information about CEOS priorities, activities and achievements.

Article 7(1): Penalties

In its observation, the Experts have noted some of the penalties available under United States law for violations relevant to Convention No. 182. The Experts also noted that some of these penalties have been increased substantially, and that penalties tend to be more severe when the infringements involve children under 18 years of age. In an attempt to further strengthen child labour protections, the President's budget for financial year 2007 once again calls for increasing the amount of civil monetary penalties that can be assessed against an employer whose violation of the child labour laws result in a youth's death or serious injury, and for even larger penalties where such violations are repeated or willful. In addition, the Department of Labor has requested additional funds to sustain a proactive enforcement programme of directed investigations in low-wage industries, including young workers, and to continue to meet its goals for investigating complaints in a timely manner.

Article 7(2): Effective and time-bound measures

Means used to encourage migrant children to remain in school

The Office of Migrant Education at the Department of Education administers several programmes that provide academic and supportive services to the children of families who migrate to find work in the agricultural and fishing industries, focusing on helping migrant students to succeed. Some of these programmes assist migrant students in meeting challenging academic standards and achieving graduation from high school by designing programmes that help migrant children overcome the effects of migrancy, such as educational disruption and cultural and language barriers. Others are designed to help break the cycle of poverty and improve the literacy of participating migrant families by integrating early childhood education, adult literacy or adult basic education and parenting education into a unified family literacy programme. Further, in response to the recommendations of a Presidential Task Force for Disadvantaged Youth, the Departments of Labor, Education, Health and Human Services, and Agriculture have joined forces to address the education needs of migrant youth, including basic education services for high-school completion, workforce training and placement services.

Measures taken by the Trafficking in Persons and Worker Exploitation Task Force

Coordination among United States federal agencies in combating trafficking, which previously occurred through the Trafficking in Persons Worker Exploitation Task Force (TPWETF), is now primarily done by the President's Interagency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group on Trafficking in Persons (SPOG). Such coordinated efforts include toll-free hotlines to report instances of human trafficking and worker exploitation, public-awareness strategies, and delivery of benefits and services to trafficking victims. Special programmes have been created to care for trafficked children who do not have a parent or guardian. Still others are aimed at addressing the educational needs of at-risk students in an effort to make these children less vulnerable to the worst forms of child labour. Extensive information has been provided to the CEACR on these activities. A good example is the campaign *Rescue and Restore Victims of Human Trafficking*, initiated by the Department of Health and Human Services. This programme is helping to increase the rate at which victims are identified and become eligible to receive benefits and services under the TVPA so that they can regain their dignity and safely rebuild their lives in the United States. Other programmes exist to help trafficking victims find appropriate jobs, including basic literacy training and related academic and vocational services, and, in some cases, federal financial aid for post-secondary education.

Programmes adopted or envisaged to keep child victims of trafficking in school

As noted above, a wide array of programmes have been created to care for child victims of trafficking, including programmes aimed at addressing their educational needs, knowing that keeping these children in school makes them less vulnerable to trafficking and other

unacceptable forms of child labour.

Programmes specifically designed to protect girls under 18 years of age from the worst forms of child labour

There are many federal and state programmes designed to protect young girls who are considered at high risk of exploitation, as well as programmes designed to rehabilitate girls coming out of particular kinds of abusive labour situations. The United States Government has provided details on several of these programmes, including the long-running Girl Power! initiative, launched by the Department of Health and Human Services (HHS) before ratification of Convention No. 182. In 2005, HHS launched a new programme to increase outreach in targeted geographic regions to girls exploited through commercial sex and other victims of trafficking.

Article 8: International cooperation

The United States contributes to a wide array of programmes that support the elimination of child labour worldwide. In particular, since 1995, the United States Government has provided approximately US$480 million for technical assistance projects aimed at eliminating exploitative child labour around the world. Of this amount, over US$295 million has gone to ILO/IPEC, making the United States the largest contributor to IPEC. In addition, through its Child Labor Education Initiative (EI), the United States has provided over US$182 million for grants to promote educational and training opportunities for child labourers or children at risk of engaging in exploitative labour. Combined, the IPEC and EI programmes have funded more than 180 projects in at least 75 countries in Asia, Africa, Latin America and the Caribbean, the Middle East and Europe.

The United States has also invested nearly US$400 million in international anti-trafficking efforts over the last five years. These programmes run the gamut from small projects to large multi-million-dollar projects to develop comprehensive regional and national strategies to combat trafficking, improve law-enforcement capacity to arrest and prosecute traffickers, enhance support to victims of trafficking, and increase awareness of both at-risk populations and policymakers to trafficking.

In addition, before the Committee, **a Government representative** stated that the United States took its obligations under ratified conventions very seriously. He pointed to document D.10 which provided point-by-point information to the Committee of Experts' comments. He indicated that the Government's article 22 report on Convention No. 182 had been transmitted to the ILO subsequent to the Committee of Experts' meeting. In the United States, ratification was viewed not as a promise to come into compliance with the provisions of an ILO Convention, but as confirmation that law and practice already conformed to all of the Convention's requirements prior to ratification. To make this determination with confidence, the Tripartite Advisory Panel on International Labor Standards (TAPILS) carefully analysed the legal feasibility of ratifying ILO Conventions. In the case of Convention No. 182, the TAPILS process actually began while the ILO Conference was negotiating the instrument in 1999, and it included tripartite participation at the highest levels. All parties agreed and confirmed, within months of the Convention's adoption, that United States law, regulations and practice gave full effect to the requirements of Convention No. 182. The speaker noted that implementation of the Convention was a work in progress, just as it was in every ratifying nation. His Government's reports to the ILO had demonstrated unceasing, aggressive actions on the part of the United States Government to enforce existing laws against the worst forms of child labour, and to study new ways to increase protection for vulnerable young workers. The Committee of Experts had acknowledged the breadth and intensity of his Government's efforts to eradicate the worst forms of child labour in the United States and around the world.

In this regard he recalled that the Committee of Experts had noted with interest the various measures under way in the United States with regard to the sale and trafficking of children, and the United States' anti-trafficking policies and programmes which were coordinated at the highest levels of Government, and which encompassed protection, prosecution and prevention. Programmes had been developed to identify trafficking victims and provide them with benefits and services, including education, so they could regain their dignity and safely rebuild their lives. Other programmes were aimed at protecting children at risk of exploitation and punishing exploiters. These efforts has had an impact on thousands of children in the United States and dozens of other countries. In addition to domestic-based activities, his Government had invested nearly US$400 million in international anti-trafficking efforts in the last five years. The Committee of Experts had also noted the Government's efforts to protect children from commercial sexual exploitation and other illicit activities; to ensure that employers, parents and young workers fully understood and complied with United States child labour laws; and to adequately punish violators and exploiters. The extent of the United States Government's international cooperation was well known, in particular, the nearly US$300 million contributed since 1995 to IPEC.

The one area where the Committee of Experts expressed concern related to hazardous work and the requirements of Articles 3(d) and 4(1) of the Convention. The Committee of Experts had correctly observed that the Fair Labor Standards Act set a lower minimum age for agricultural occupations determined to be hazardous than for hazardous non-agricultural occupations. However, in the pre-ratification legal review of the Convention, TAPILS concluded unanimously that this differentiation was not in conflict with the Convention. Their conclusion was based on the negotiating history of the Convention, which made it clear that Article 4 allowed governments, in good faith and subject to certain procedural requirements, to establish standards that treated children of different ages differently, and that treated different classes of occupations differently. In his Government's view, countries had the discretion – and the responsibility – to consider the actual nature and circumstances of work performed by children and their age. Moreover, in the United States, laws and regulations relating to the prohibition of hazardous child labour in agriculture were supported by government initiatives to find ways to better protect the health and safety of children working in the agricultural industry. His Government also used strong enforcement, compliance assistance and strategic partnerships to ensure that young agricultural workers had safe and appropriate work experiences. As a matter of policy, the Department of Labor's Wage and Hour Division examined child labour compliance in every full investigation that it conducted. The speaker also pointed to programmes to protect farm workers and their children from pesticides, to educate young workers about safety and health in agriculture and to prevent injuries among children working in agriculture. Federal laws and programmes, furthermore, were often supplemented by measures at the state level. Regarding the Committee of Experts' comment on amendments to the Hazardous Orders that constituted the determination of the types of hazardous work contemplated by Articles 3(d) and 4 of the Convention, the speaker pointed out that some of the Hazardous Orders had in fact been amended, and that the Department of Labor anticipated proposing further revisions to the child labour regulations, in light of the recommendations of the National Institute for Occupational Safety and Health (NIOSH). The review included stakeholder meetings with all interested parties, such as trade unions and employer organizations.

Finally, the speaker stressed that the Wage and Hour Division gave child labour complaints its highest priority. He reiterated that child labour compliance was an element of every full investigation. In addition, the Division conducted self-directed investigations, which were not dependent upon complaints, but initiated wherever child labour violations were most likely to occur. The Department had also addressed the problem of repeated violations in three industries where the highest proportion of youth was employed – grocery stores, full service restaurants and quick services. The result of all these efforts had been a pattern of increased compliance with child labour laws over the past five years. In agriculture, however, violations were up last year. Consequently, the Wage and Hour Division would continue to target youth agricultural workers through its self-directed enforcement and would continue to prioritize any child labour complaints received in the agriculture industry. He concluded by stating that protecting children from labour that was unsafe, unhealthy or detrimental to their education was an ongoing process in the United States. Although there might be differing viewpoints with respect to the best approach to be taken, his Government was committed to the prohibition and elimination of the worst forms of child labour. He noted that the Government would continue its efforts in this regard, and would continue to inform the ILO about these efforts and their impact.

The Worker members thanked the Government for the extensive information submitted to the Committee which indicated considerable efforts to eliminate the worst forms of child labour. Nonetheless, they regretted that the article 22 report had been received only after the Committee of Experts report had been published. The Government admitted that its regulations fixed a lower minimum age for hazardous work in agriculture than in non-agricultural sectors. The Government argued that this differentiation was admissible under certain conditions, referring to the preparatory work on Convention No. 182. In its report, however, the Committee of Experts did not appear to have the same view. The Worker members thus requested the Committee of Experts to pronounce itself on this question in general in their next report, not only in connection with the case of the United States. Furthermore, they wished to have clarification from the Government as regards amendments to the provisions on hazardous work and on child labour, made at the end of 2004. Finally, they noted that the Government had provided information concerning initiatives and programmes to fight the worst forms of child labour, as well as improvements in some areas, and deterioration in others, notably in the agricultural sector. They asked for greater quantitative information in this regard.

The Employer members recalled the fundamental nature of Convention No. 182 and its profound legal and moral weight in the community of nations. They commended the United States for its important role in seeking to eliminate the worst forms of child labour and recalled the Global Report on child labour, currently under discussion at this Conference, which indicated that progress had been made but also pointed to the magnitude of the task that remained. They commended the work carried out by the Committee of Experts which helped the United States Government to deal with human trafficking, illicit activities and hazardous work, and encouraged businesses to achieve high standards with regard to the employment of minors. The Employer members noted that the Committee of Experts had request-

ed action to be taken by the Secretary of Labor with respect to the minimum age for hazardous work in the agricultural sector. The Committee of Experts were concerned that the minimum age of 16 for hazardous work in the agricultural sector was different from the minimum age of 18 in various other industries. It had to be borne in mind that Article 4(1) of the Convention provided that the "types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority ... taking into consideration relevant international standards". The standard itself did not provide the minimum age for employment; this was a matter for national determination in consultation with national social partners. Those national determinations had to be based on national circumstances. In the agricultural sector there was a high incidence of family or community-based work. This was not unique to the United States; nor were health and safety risks in agriculture. A mere differential between a minimum age for agricultural occupations and a minimum age for non-agricultural occupations was not in itself in conflict with the Convention. Hence, it was difficult to say that the Order of the Secretary of Labor was in conflict with the Convention. In addition, employees under domestic law in the United States carried significant obligations relating to the health and safety of employees, whatever the age of the employees, and in all industries.

The Worker member of the United States stated that a great number of young children worked long, hard hours in agriculture under working conditions that threatened their health, safety and well-being. The Fair Labor Standards Act permitted children in agriculture to work at younger ages, longer hours and in more dangerous occupations than children in any other industry, working on average 30 hours a week. Among 15-17 year-olds, child workers in agriculture accounted for at least 25 per cent of all fatalities experienced by all young workers. United States legislation prohibited a 12-13 year-old from working in an air-conditioned office but allowed children of the same age to work unlimited hours outside of school harvesting produce under the blazing sun without adequate water or sanitation. The three major industries in the United States that employed children were grocery stores, full service restaurants and quick service restaurants. Legal protection was sparsely enforced, labour inspections by federal agencies had declined and records were inadequately maintained. The speaker stated that last year, the Department of Labor had lowered the age below which it was impermissible for fast food restaurants and other retail establishments to employ children to operate deep fryers and grills and to clean grills and deep fryers that had cooled to 100 degrees Fahrenheit, in spite of concerns raised by the National Institute for Occupational Safety and Health (NIOSH). This clearly weakened the protection afforded to young workers in hazardous occupations. Another regulatory change allowed for 16-17 year-olds to load paper balers and compactors that met specific safety standards. Such equipment was extremely dangerous to operate. This also represented a serious step backwards by the United States in protecting against the worst forms of child labour.

With respect to the Government's assertion that the Department of Labor gave the highest priority to child labour complaints, the speaker noted that the Department had reached a settlement with Wal-Mart, where it had found that the company had committed dozens of violations of the Secretary's Hazardous Orders in three states, including violations of the prohibitions of loading, operating and unloading of paper balers by 16 and 17-year-olds. The settlement provided the company with advance notification of future investigations and the ability to avoid civil money penalties. When the agreement became public, Congress demanded that the Department of Labor's Office of Inspector General launch an investigation. This agreement raised serious concerns over the Government's ability and commitment to protect children from the worst forms of child labour. The speaker urged the Committee of Experts to continue to closely monitor developments in the United States.

The Worker member of the United Kingdom noted that the present discussion concerned the most vulnerable segments of the population in the world's richest nation, namely children of migrant agricultural workers and workers resident in the United States, the number of which was estimated at 800,000. He presented to the Committee the testimonies of several child labourers in agriculture in the United States. These included Dora, a 15-year-old from Eagle Pass, Texas, who worked every summer in the sugar beet fields of Minnesota. Dora worked nine hours per day in the fields in extreme heat or cold and often without drinking water for hours. She had also been exposed to pesticides thrown from airplanes. Dora also missed classes because she and her family had to leave for the fields in May every year. The speaker also mentioned Santos, 16 years old, who had started cutting onions at the age of five, and who had hurt himself many times in the fields and had often worked for hours without drinking water. Flor, began to work in a fruit packing plant in Washington State at the age of 15, a year younger than the State law permitted. Together with another 100 workers, seven of which were 15 or younger, she suffered poisoning by carbon monoxide fumes and was dismissed by the company because she was underage, without receiving any form of compensation. The speaker also cited the cases of Jessica, who left school at the age of 15 to work in the melon fields near Yuma, where she worked 12 hours a day and earned US$3 per hour, and of Dean, aged 14, who also worked 12 hours per day, sleeping only six hours a night. He chopped cotton and pitched watermelons in the fields of Arizona, where temperatures routinely rose above 40 degrees.

Under United States federal law, a 12-year-old child could harvest from 3 to 8 a.m. seven days a week, before going to school, while a 15-year-old could work 50 hours a week during a school year. He also remarked that many children were dropping out of school to work full time in the fields. Turning to the provisions of Convention No. 182, and in particular its Article 4, the speaker recalled the importance of Paragraph 3 of Recommendation No. 190 in the determination of hazardous work, which in his view represented minimum international standards. Recalling that Convention No. 182 required States to take full action for the elimination of the worst forms of child labour, he invited the Government to heed to the recommendations of the Committee of Experts, amend the legislation and re-establish a labour inspectorate committed to protecting workers and children rather than restricting labour union rights.

The Government member of Cuba indicated that the Committee of Experts was unable to examine the report by the United States as it was not sent within the set deadline. This non-compliance constituted an obstacle against the good functioning of the supervisory mechanism, as it did not allow the comprehensive examination of the case, which was before the Committee. With respect to Article 3(a) of the Convention relating to the trafficking of persons, the late reply of that country only included information of a general nature, omitting important details on the number and adequacy of sanctions, which applied in cases of trafficking of persons and that of sexual tourism. This was in contrast with the very exhaustive report made by the State Department on the situation of trafficking of persons in the rest of the world. Thus while this Committee was discussing the case of the United States, Washington was evaluating the rest of the world. Set against the above context, the speaker pointed to the so-called Cuban Adjustment Act, which encouraged and privileged illegal emigration from Cuba to the United States. It was a business of death in which hundreds of traffickers acted in all impunity in the South of Florida. It would thus be preferable for the Committee of Experts to request more information on persons who were prosecuted on the grounds of this grave offence, the sanctions imposed and the nationality of traffickers.

With regard to Article 3(c) of the Convention on illicit activities, the country in question indicated that it had submitted copies of federal laws, which prohibited the sale, delivery or offering of firearms to children. Additional information relating to subparagraph 3(b) had been omitted, which concerned the use of children in child prostitution and pornography, which was mentioned in a previous observation by the Committee of Experts. It was also in the above case that it would be preferable for the Committee of Experts to request information on the number of victims, their nationality, and sanctions applied to the perpetrators. Finally, with respect to Article 7 of the Convention, the Committee of Experts should rely on more precise information, which would enable it to evaluate if the monetary sanctions imposed on unscrupulous employers, who were responsible for violations relating to child labour, were sufficiently dissuasive to discourage such horrible practices.

The Worker member of India noted that annually 50,000 trafficked women and children, with a majority from South-East Asia, were employed in the United States in the sex industry, in domestic and cleaning work, in sweat shops and in agricultural work. According to the report of the Committee of Experts, between 300,000 and 800,000 children were employed in agriculture under hazardous conditions. Many worked for 12 hours a day and suffered from rashes, headaches, dizziness, nausea and vomiting as a result of their exposure to dangerous pesticides. They also risked long-term illnesses due to pesticide exposure, in particular cancer and brain damage, while injuries from knives and heavy equipment were common as well. The speaker went on to acknowledge the existence of legislation against trafficking, involuntary servitude and prostitution, but emphasised that law without implementation was useless. Although the United States had spent nearly US$400 million within the last five years in anti-trafficking efforts, the country still faced great difficulties in punishing traffickers, rehabilitating victims and protecting children from the worst forms of child labour. A question might very reasonably arise in the minds of the civilized world, as to why the powerful United States Administration, capable of detecting and targeting missile attacks at the kitchen of their enemy 10,000 km away, could not detect the offenders in their territory and punish them. This was perhaps because of absence of political will as the employers benefited from employment of cheap child labour like those in other countries of the world. In the given circumstances, the United States should supply information on the compliance of the Convention on Worst Forms of Child Labour, particularly, with numbers and rates of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

The Worker member of Pakistan noted that the number of children in hazardous work had declined by 26 per cent, as indicated in this year's Global Report. The Committee of Experts' report pointed out that an estimated 50,000 women and children were annually trafficked in the United States, of which 30,000 came from South Asia. The Government had indicated that it had established strategic partnerships with Central American countries to combat trafficking. He proposed establishing similar cooperation with Asian countries. While

he acknowledged the information provided by the Government concerning efforts to combat trafficking, the speaker called for further information on the number of offenders prosecuted and on how many victims of trafficking had been rehabilitated. It would be useful as well to obtain more information on prosecutions and penalties imposed for cases of sexual exploitation of children.

The Government representative wished to provide clarification with regard to a comment regarding the Wal-Mart settlement. The speaker stated that the Wal-Mart agreement was part of the Labor Department's comprehensive efforts aimed at protecting young workers. The corporate-wide settlement reached with Wal-Mart imposed a number of significant, proactive obligations that went far beyond what the law required, and the agreement secured the payment of 90 per cent of the penalties that had been initially assessed, which was high in comparison to the average settlement rate of 70 per cent. Under the agreement, Wal-Mart agreed to decline from employing 14 and 15-year-olds, even though this was legal in many cases, and it agreed to prohibit 16 and 17-year-olds from using cardboard balers. The company also agreed to make compliance with child labour laws a factor in evaluating the performance of managers. Most of these measures would not have been implemented in the absence of the agreement. Furthermore, he stressed that nothing in the agreement prevented the Wage and Hour Division from conducting unannounced interventions to protect youth from hazardous situations. He pointed out that the Department of Labor's Office of the Inspector General had acknowledged that the Department had addressed its concerns over the Wal-Mart settlement, and that it now considered the matter closed. In closing, he assured the Committee that his Government would take into consideration the debate and conclusions, and would respond fully and promptly to all issues raised.

The Employer members recalled that the purpose of the Conference Committee was to call upon governments to account for their legislation and practice. What was of relevance to the present discussion was not the conduct of individual corporations but that of the respondent government. In response to the comments made by the Worker member of the United Kingdom on Article 2 of the Convention, the speaker drew attention to the fact that the Article did not establish a standard for child employment. What was prohibited by the terms of Article 2 was employment that constituted the worst forms of labour. The question of whether work of hazardous nature was being performed could be answered only by recourse to the provisions of Articles 3(d) and 4(1) of the Convention. The speaker expressed his satisfaction with the response provided by the United States. He considered it to be a serious response which should be considered not only for the discussion of the specific case but also for the overall work of the Committee.

The Worker members once more expressed their regret about the delayed receipt of the report on Convention No. 182. They observed that the ratification of the United States with respect to the fundamental human rights Conventions being so poor, one would have expected the Government to be keen to set an example as regarded their obligations under ratified Conventions. They also regretted the fact that the United States, a country that was proud of its human rights standards, had not opened up itself more to the ILO supervisory system by ratifying more fundamental human rights Conventions. Now, they were not really in a strong and credible position to teach lessons to countries that had ratified these ILO Conventions. The Worker members wished to see the United States as the richest country in the world setting an example for other countries in the implementation of this Convention. They acknowledged the efforts made by the Government to eliminate the worst forms of child labour but pointed out that it had not put in place the laws necessary to attain this objective. They invited the Government to reinforce the programmes for the eradication of child labour by integrating them into a national coherent action plan, in which the social partners would fully participate, and to provide the Committee of Experts with detailed information on the development and the effects of these programmes, respecting the reporting cycle of the Convention. The Worker members also requested the Committee of Experts to continue to examine the situation in the country by reviewing the progress of all implemented programmes. In closing, they expressed their wish to see their comments reflected in the conclusions and their desire for the Committee of Experts to address the question of the differentiation of minimum age for hazardous work as per sector of economic activity not only for the United States, but also in a more general context, taking into account the conflicting views on this issue of the US Government and the Committee of Experts.

The Committee noted the detailed written and oral information provided by the Government representative and the discussion that ensued, while noting that the report to the Committee of Experts had not been received in time. The Committee noted the information contained in the report of the Committee of Experts relating to the sale and trafficking of persons under 18 into the United States for purposes of economic and sexual exploitation, as well as the employment of children in hazardous work in the agricultural sector.

In this regard, the Committee noted the information provided by the Government representative that his country was leading the world in the fight against trafficking in persons and that the centrepiece of United States Government efforts was the Trafficking Victims Protection Act of 2000 (TVPA), which enhanced three aspects of government activity to combat trafficking in persons: protection, prosecution and prevention. Furthermore, the TVPA increased protections and assistance for victims of trafficking; created new crimes, and enhanced penalties for existing crimes including trafficking for labour or sexual exploitation. The Committee further noted with interest the Government's indication that the Trafficking Victims Protection Act was reauthorized in 2003 and 2005 and, inter alia, mandated new information campaigns to combat sex tourism, enhanced anti-trafficking protections under federal law and expanded services available to victims, including appointing guardians for young victims and providing access to residential treatment facilities. Finally, the Committee noted the information provided by the Government representative that the number of persons trafficked annually into the United States was currently less than previous estimates. The Committee welcomed the recent measures taken to combat trafficking in children for labour or sexual exploitation. It nevertheless noted that, although the law prohibited the trafficking of children for labour or sexual exploitation, it remained an issue of concern in practice. The Committee accordingly invited the Government to redouble its efforts to eliminate the trafficking of children under 18 years of age for labour and sexual exploitation and asked it to provide information in its next report to the Committee of Experts on progress made in this regard.

Concerning the issue of the employment of children under 18 in work determined to be hazardous in the agricultural sector, the Committee noted the information provided by the Government representative that it was true that the Fair Labour Standards Act set a lower minimum age of 16 for agricultural occupations determined to be hazardous, than for hazardous non-agricultural occupations. However, in the Government's view, this differentiation was not in conflict with Articles 3(d) and 4(1) of the Convention that allowed governments to establish standards that treated children of different ages differently, and that treated classes of occupations differently. The Government representative had also pointed out that in the United States, laws and regulations relating to the prohibition of hazardous child labour in agriculture were supported by government initiatives to find ways to better protect the health and safety of children working in the agricultural industry. These included programmes to protect farm workers and their children from pesticides, to educate young workers about safety and health in agriculture, and to prevent injuries among children working in agriculture. While taking note of this information, the Committee shared the concern expressed by many speakers with regard to the hazardous and dangerous conditions that were and could be encountered by children under 18, and indeed in some cases under 16, in the agricultural sector. The Committee also noted the statement of the Government representative that, although child labour violations across industries continued to decrease, violations in agriculture had increased the previous year.

The Committee emphasized that, by virtue of Article 3(d), work which, by its nature or the circumstances in which it was carried out was likely to harm the health, safety or morals of children, constituted one of the worst forms of child labour and that, by virtue of Article 1 of the Convention, member States were required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. While Article 4(1) allowed the types of hazardous work to be determined by national laws or regulations or the competent authority, after consultation with the social partners, the Committee noted that the Fair Labour Standards Act authorized children aged 16 to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labour.

The Committee accordingly requested the Government to indicate, in its next report to the Committee of Experts, the measures taken or envisaged (including but not limited to legislation) to ensure that work performed in particular in the agricultural sector was prohibited for children under 18 years where it was hazardous work within the meaning of the Convention.

The Worker member of the Netherlands, in addition to raising an editorial point, noted that the length of the Committee's conclusions was constantly increasing. He expressed the view that it would be more productive if the Committee focused more closely on the most important substantive matters in shorter conclusions.

Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 16 June 2006

The table published in the Report of the Committee of Experts, page 481, 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.

Afghanistan — 14 reports requested

(Paragraphs 21 and 31)

· All reports received: Conventions Nos. 13, 14, 41, 45, 95, 100, 105, 106, 111, 137, 139, 140, 141, 142

Bahamas — 10 reports requested

(Paragraphs 27 and 31)

· All reports received: Conventions Nos. 22, 45, 87, 88, 98, 100, 111, 144, (147), 182

Barbados — 19 reports requested

(Paragraph 31)

· 17 reports received: Conventions Nos. 22, 29, 63, 74, 81, 87, 98, 100, 105, 108, 111, 115, 118, 122, 135, 144, 182
· 2 reports not received: Conventions Nos. 138, 147

Bosnia and Herzegovina — 58 reports requested

(Paragraph 31)

· 20 reports received: Conventions Nos. 8, 11, 14, 24, 25, 45, 56, 81, 87, 88, 90, 98, 100, 103, 106, 111, 122, 132, 138, 140
· 38 reports not received: Conventions Nos. 9, 12, 13, 16, 19, 22, 23, 27, 29, 32, 53, 69, 73, 74, 91, 92, 97, 102, (105), 113, 114, 119, 121, 126, 129, 131, 135, 136, 139, 142, 143, 148, 155, 156, 159, 161, 162, (182)

Botswana — 12 reports requested

(Paragraph 31)

· 9 reports received: Conventions Nos. 29, 87, 98, 100, 105, 138, 144, 151, 173
· 3 reports not received: Conventions Nos. 111, 176, 182

Burkina Faso — 9 reports requested

· 8 reports received: Conventions Nos. 13, 87, 98, 100, 111, 144, 159, 161
· 1 report not received: Convention No. 170

Burundi — 15 reports requested

(Paragraph 31)

· 10 reports received: Conventions Nos. 62, 81, 87, 89, 94, 98, 100, 111, 135, 144
· 5 reports not received: Conventions Nos. 29, 101, 105, 138, (182)

Chad — 16 reports requested

· All reports received: Conventions Nos. 13, 14, 26, 29, 41, 81, 87, 98, 100, 105, 111, (132), 135, 144, 151, (182)

Chile — 20 reports requested

(Paragraph 31)

· All reports received: Conventions Nos. 2, 9, 13, 29, 87, 98, 100, 103, 111, 115, 121, 122, 127, 136, 140, 144, 151, 159, 161, 162

Comoros — 15 reports requested

(Paragraph 21)

· 2 reports received: Conventions Nos. 13, 98
· 13 reports not received: Conventions Nos. 5, 10, 11, 12, 29, 52, 81, 87, 89, 100, 105, 106, 122

Côte d'Ivoire — 14 reports requested

(Paragraph 31)

- 12 reports received: Conventions Nos. 13, 45, 81, 87, 96, 98, 100, 111, 129, 136, 144, (182)
- 2 reports not received: Conventions Nos. (138), 159

Democratic Republic of the Congo — 17 reports requested

(Paragraph 31)

- 10 reports received: Conventions Nos. 14, 29, 81, 87, 88, 98, 100, 102, 111, 150
- 7 reports not received: Conventions Nos. 62, 89, 117, 119, 120, 121, 144

Denmark — 35 reports requested

- 31 reports received: Conventions Nos. 9, 29, 52, 53, 81, 88, 92, 100, 105, 108, 111, 115, 119, 120, 122, 134, 135, 138, 139, 142, 144, 147, 148, 150, 151, 155, 159, 160, 167, 169, 182
- 4 reports not received: Conventions Nos. 87, 98, (133), (180)

France — 29 reports requested

- All reports received: Conventions Nos. 8, 13, 22, 23, 45, 53, 62, 63, 87, 88, 92, 96, 98, 100, 108, 111, 115, 120, 122, 127, 136, 139, 144, 145, 146, 147, 148, 159, (180)

France - Guadeloupe — 24 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 8, 13, 22, 23, 29, 45, 53, 62, 87, 92, 98, 100, 105, 108, 111, 115, 120, 129, 135, 136, 144, 145, 146, 147

Grenada — 14 reports requested

(Paragraphs 21 and 31)

- All reports received: Conventions Nos. 8, 14, 16, 29, 81, 87, 98, 100, 105, 108, (111), (138), 144, (182)

Guyana — 21 reports requested

(Paragraphs 21 and 31)

- All reports received: Conventions Nos. 2, 29, 45, 81, 87, 98, 100, 105, 108, 111, 115, 129, 135, 136, 138, 139, 144, 150, 151, 166, 182

Kazakhstan — 15 reports requested

- All reports received: Conventions Nos. 29, 81, 87, 88, 98, 105, 111, 122, 129, 135, 138, 144, 148, 155, (182)

Republic of Korea — 8 reports requested

- All reports received: Conventions Nos. (53), 73, 81, 138, 150, 160, (170), 182

Lao People's Democratic Republic — 2 reports requested

(Paragraphs 21 and 31)

- All reports received: Conventions Nos. 13, 29

Luxembourg — 24 reports requested

- 22 reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 56, 68, 69, 73, 74, 81, 92, 105, 108, 138, 147, 150, 166, 182
- 2 reports not received: Conventions Nos. 135, (172)

Madagascar — 9 reports requested

- All reports received: Conventions Nos. 13, 29, 81, 111, 129, 138, 159, 173, (182)

Malta — 18 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 2, 8, 13, 16, 22, 29, 53, 62, 73, 74, 81, 105, 108, 129, 138, (147), 180, 182

Netherlands - Aruba — 18 reports requested

(Paragraphs 21 and 31)

- All reports received: Conventions Nos. 8, 9, 22, 23, 29, 69, 74, 81, 87, 88, 105, 122, 135, 138, 144, 145, 146, 147

Netherlands - Netherlands Antilles

13 reports requested

· All reports received: Conventions Nos. 8, 9, 22, 23, 29, 58, 69, 74, 81, 87, 88, 105, 122

Pakistan

20 reports requested

· All reports received: Conventions Nos. 1, 14, 16, 18, 22, 29, 45, 81, 87, 89, 96, 98, (100), 105, 106, 107, 111, 144, 159, (182)

Panama

23 reports requested

· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 30, 53, 55, 56, 68, 69, 71, 73, 74, 81, 92, 105, 108, 122, 138, 160, 182

Paraguay

24 reports requested

(Paragraphs 21, 27 and 31)

· 19 reports received: Conventions Nos. 1, 29, 30, 52, 79, 81, 87, 89, 90, 98, 100, 111, 115, 119, 120, 122, 159, 169, (182)
· 5 reports not received: Conventions Nos. 14, 101, 105, 106, 117

Seychelles

15 reports requested

· 7 reports received: Conventions Nos. 8, 87, 98, 100, 111, 148, 151
· 8 reports not received: Conventions Nos. 2, 16, 29, 105, 108, 138, 150, 182

Slovenia

26 reports requested

· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 56, 69, 73, 74, 81, 88, 92, 98, 100, 105, (108), 111, 119, 122, 129, 138, 147, (149), 182

Swaziland

11 reports requested

(Paragraph 31)

· 10 reports received: Conventions Nos. 14, 29, 45, 81, 87, 96, 105, 111, 138, (182)
· 1 report not received: Convention No. 160

United Republic of Tanzania

11 reports requested

· All reports received: Conventions Nos. 16, 29, 63, 87, 94, 105, 134, 137, 138, 149, 182

United Republic of Tanzania - Tanganyika

5 reports requested

(Paragraph 31)

· 4 reports received: Conventions Nos. 81, 88, 101, 108
· 1 report not received: Convention No. 45

Thailand

3 reports requested

(Paragraph 31)

· All reports received: Conventions Nos. 29, 105, 182

Trinidad and Tobago

12 reports requested

· 11 reports received: Conventions Nos. 16, 29, 87, 98, 100, 105, 111, 144, 147, 159, (182)
· 1 report not received: Convention No. 85

Uganda

13 reports requested

(Paragraphs 27 and 31)

· 9 reports received: Conventions Nos. 17, 26, 29, 81, 105, 123, 143, 159, (182)
· 4 reports not received: Conventions Nos. 19, 45, 94, (138)

Ukraine

19 reports requested

· All reports received: Conventions Nos. 16, 23, 29, 69, 73, 92, 100, 105, 108, 119, 120, 133, (135), 138, (140), 147, (159), 160, 182

United Kingdom - Bermuda — 10 reports requested

· All reports received: Conventions Nos. 16, 22, 23, 29, 58, 98, 105, 108, 133, 147

United Kingdom - British Virgin Islands — 9 reports requested

· All reports received: Conventions Nos. 8, 23, 29, 58, 85, 87, 98, 105, 108

United Kingdom - Falkland Islands (Malvinas) — 10 reports requested

· All reports received: Conventions Nos. 8, 22, 23, 29, 45, 58, 87, 98, 105, 108

United States — 9 reports requested

(Paragraph 31)

· 8 reports received: Conventions Nos. 53, 55, 58, 74, 105, 150, 160, 182
· 1 report not received: Convention No. 147

United States - American Samoa — 4 reports requested

· 3 reports received: Conventions Nos. 53, 55, 58
· 1 report not received: Convention No. 147

United States - Guam — 5 reports requested

· 4 reports received: Conventions Nos. 53, 55, 58, 74
· 1 report not received: Convention No. 147

United States - Puerto Rico — 5 reports requested

· 4 reports received: Conventions Nos. 53, 55, 58, 74
· 1 report not received: Convention No. 147

United States - United States Virgin Islands — 5 reports requested

· 4 reports received: Conventions Nos. 53, 55, 58, 74
· 1 report not received: Convention No. 147

Viet Nam — 3 reports requested

(Paragraph 31)

· All reports received: Conventions Nos. 81, (138), 182

Zambia — 24 reports requested

· 13 reports received: Conventions Nos. 95, 100, 103, 105, 111, 117, 122, 135, 138, 141, 148, 173, (182)
· 11 reports not received: Conventions Nos. 29, 87, 98, 136, 144, 149, 150, 151, 154, 159, 176

Grand Total

A total of 2,637 reports (article 22) were requested,
of which 2,065 reports (78.31 per cent) were received.

A total of 343 reports (article 35) were requested,
of which 303 reports (88.34 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as of 16 June 2006

(article 22 of the Constitution)

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

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%

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

Observations and Information

(a) Failure to submit instruments to the competent authorities

A Government representative of Afghanistan indicated that with the technical assistance provided by the ILO standards specialists from New Delhi and Geneva, his Government had set out as objectives the ratification of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), the acceptance of the 1997 Instrument of Amendment of the ILO Constitution, the denunciation of the Dock Work Convention, 1973 (No. 137), and the submission of pending instruments to the newly elected National Assembly.

The speaker indicated that the report forms for 13 Conventions ratified by Afghanistan had been translated into Dari and distributed to government officials and the social partners. The Government's report, including comments of the social partners, had been submitted to the Committee of Experts. The Labour Code of 1987 had been revised with the assistance of the ILO, and the 2006 draft Labour Code had been appended to the Government's report for examination by the Committee of Experts.

The speaker noted that the Afghanistan Compact 2006 included a strategy that provided for the training of 150,000 men and women by the end of 2010 and the completion of a human resources study by the end of 2006, all to be achieved through the implementation of the National Skills Development and Market Linkage Programme. Through this programme and ILO technical assistance, he was confident that Afghanistan would be able to implement the Human Resources Development Convention, 1975 (No. 142).

With a view to implementing the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the speaker referred to the need for the establishment of a tripartite consultative council and assistance by ILO technical specialists in the field of social dialogue in this regard.

He welcomed the progress made by the ILO-assisted Project on the establishment of employment services, noting its importance in the promotion of Convention No. 142 and the Conventions on employment services (Nos. 88 and 181).

The speaker informed the Committee that, following a Cabinet reshuffle, the responsibility for labour issues now rested with the Ministry for Martyrs, the Disabled and Social Affairs. In closing, he invited the Conference Committee to acknowledge the progress made by his country and asserted his Government's commitment to work closely with the ILO.

A Government representative of Haiti stated that unfortunately the Permanent Mission in Geneva had not received any communication from the national competent authority. Considering that the Parliament had not met between 2004 and 2006, the administrative reasons invoked for failing to report last year remained the same. He said that the Parliament had been in session since the month of May this year and that the Government would do its utmost to prepare the reports and submit them to the Parliament without undue delay. Technical assistance from the Office would be needed to help Haiti catch up with its significant backlog.

The Committee noted the information and explanations provided by the Government representatives who took the floor. It also took note of the specific difficulties encountered in complying with this obligation mentioned by various speakers. Finally, it took note of the promises made by certain government delegations to comply with their constitutional obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the shortest time possible. The Committee expressed the firm hope that the countries mentioned, in particular Afghanistan, Haiti, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan would supply their reports in the near future, containing information relevant to the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee expressed its great concern regarding the delays and failures to submit, and the rise in the number of such cases, as this concerned obligations arising from the Constitution which were essential for the efficacy of standards-related activities. In this respect, the Committee affirmed that the ILO could offer technical assistance to contribute to the fulfilment of this obligation. The Committee decided to mention these cases in the appropriate section of its General Report.

(b) Information received

Armenia. The ratification of Convention No. 182, adopted at the 87th Session of the Conference (1999), was registered on 2 January 2006.

Cambodia. The ratification of Convention No. 182, adopted at the 87th Session of the Conference (1999), was registered on 14 March 2006.

III. REPORTS ON UNRATIFIED CONVENTIONS, RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

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

A Government representative of Angola stated that his country had submitted its report concerning the application of Convention No. 81 in accordance with article 22 since this Convention had been ratified. He assured that there had been a misunderstanding with respect to the obligation to submit reports under article 19. He stressed that general labour inspection activities were carried out in all sectors, including industrial, commercial, private and public, without any exclusion for the agricultural sector, in accordance with Conventions Nos. 81 and 129.

A Government representative of Bosnia and Herzegovina stated that her country had submitted numerous reports and that it would make up the delay. She emphasized that Convention No. 144 had been ratified and that the instrument of ratification would be deposited in the near future.

A Government representative of Djibouti indicated that the lack of reports on ratified Conventions could be explained by the fact that at the time of independence, his country had ratified 60 Conventions. These ratifications signified a workload that exceeded the capacity of the authority charged with the preparation of the reports. The speaker reiterated his Government's request for technical assistance which would help his country to train the employees responsible for the preparation of reports and also to denounce ratified Conventions which were no longer relevant for Djibouti.

A Government representative of the Dominican Republic indicated that, as the year before, his country was in the sad position of non-compliance with the obligation to supply reports on unratified Conventions (article 19). For this reason, he referred the secretariat to his previous statement indicating that the reports on Conventions Nos. 29 and 105 had been sent and reference should be made to them. The Dominican Republic had sent all the reports on ratified Conventions, in accordance with article 22 of the ILO Constitution. The Government was open to dialogue and agreement, as it considered as good and valid any approach proposed by the Office. He recalled that the Government had communicated the reports on the General Survey and Conventions Nos. 1 and 30 on 14 November 2005.

A Government representative of Guinea stated that his country had ratified 58 Conventions, including eight fundamental ones, and had regularly fulfilled its reporting obligations under the Conventions. He apologized on behalf of his Government with respect to non-ratified Conventions and stated that the competent authorities, in consultation with the social partners, were currently examining this issue. The Government committed itself, with the technical assistance of the Office, to submit reports on non-ratified Conventions in the future.

A Government representative of Guyana stated that his Government had not intended to neglect its obligations. His Government had been led to believe that, because Guyana had ratified Conventions Nos. 81 and 129 and had duly submitted reports under article 22, it was not required to do so under article 19. The outstanding report would be submitted shortly.

A Government representative of Kiribati apologized for the late submission of reports. She indicated that four Conventions had been submitted for consideration for ratification and were currently with the Attorney General for legal examination.

A Government representative of Uganda pointed out that in the past five years his Government had made it a priority to submit instruments adopted at the ILC to the competent authority. As a result five of the eight fundamental Conventions had been submitted, i.e. Conventions Nos. 87, 100, 111, 138 and 182. All these Conventions had been ratified. In addition, four new labour laws concerning employment, occupational safety and health, trade union and labour relations, had been recently enacted, taking into account fundamental labour standards, ratified Conventions as well as some non-ratified Conventions. The laws had received Presidential assent on 24 May 2006 and would be transmitted to the Office as soon as possible. He expressed his thanks to the ILO for its support in this process and to the social partners and the international community.

A Government representative of the Democratic Republic of the Congo referred to his Government's failure to submit reports on non-ratified Conventions. He stated that his Government had submitted a report under article 22 of the Constitution on the application of Convention No. 81 and that it committed itself to submit a report on Convention No. 129 as well as reports on the accompanying Recommendations in the very near future, notwithstanding the upcoming elections in July.

A Government representative of Togo referred to his previous statement as also being applicable to the failure to supply reports on non-ratified Conventions.

The Worker members stressed that the obligation to submit reports constituted a key feature of the supervisory system. The governments that did not fulfil their reporting obligations had an unjustified advantage since, in the absence of any reports, the Committee could not review their national legislation and practice. This Committee should insist that these governments take all necessary measures in order to fulfil their obligations in the future.

The Employer members agreed with the statement of the Worker members. They were under the impression that this year the reporting situation had improved somewhat, although it was unclear whether this was a coincidence or a general trend. They expressed their appreciation to the governments that had provided information as to their situation, and especially to those that had submitted their reports. The Committee of Experts could not fulfil its task without the submission of timely reports. The Employer members also noted that the failure to report was especially apparent in countries that had not been accredited to the International Labour Conference. The ILO should look into why certain countries did not participate in the ILC. They recalled that governments which did not participate in the ILC were not absolved of their obligations to report on the application of international labour standards.

The Committee noted the information and explanations provided by the Government representatives who took the floor. The Committee stressed the importance it attached to the constitutional obligation of supplying reports on unratified Conventions and Recommendations. Such reports made it possible to evaluate the situation more fully in the context of the General Surveys prepared by the Committee of Experts. The Committee urged all member States to comply with their obligations in this respect and expressed the firm hope that the Governments of Albania, Angola, Antigua and Barbuda, Armenia, Bosnia and Herzegovina, Cape Verde, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Dominican Republic, Guinea, Guyana, Kazakhstan, Kiribati, Kyrgyzstan, Liberia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda and Uzbekistan would comply in the future with their obligations under article 19 of the Constitution. The Committee decided to mention these cases in the appropriate section of its General Report.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions, unratified Protocols and Recommendations have subsequently been received from the following countries: Afghanistan, Côte d'Ivoire and Zambia.

(c) Reports on Convention No. 81 and the Protocol of 1995 to Convention No. 81, Recommendations Nos. 81 and 82, Convention No. 129 and Recommendation No. 133 as of 16 June 2006

In addition to the reports listed in Appendix III on page 148 of the Report of the Committee of Experts (Report III, Part I(B)), reports have subsequently been received from Afghanistan, Côte d'Ivoire and Zambia.

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