International Labour Conference

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PART TWO

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

A. General Observations and Information concerning Certain Countries

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

The Employer members explained that the use of the term "automatic cases" could be misunderstood in that such term seemed unimportant. However, these cases were very important and were only called "automatic" because they were examined every year by the Committee. The fulfilment of the fundamental obligation of member States to submit reports under the ILO Constitution was the basis of the work, not just of this Committee, but of the whole supervisory machinery. If governments did not send their reports on the application of ratified Conventions, the ILO supervisory machinery would fail already before it had been started. The Employer members pointed out that if countries did not fulfil their reporting obligations, then it would be very difficult to evaluate the important issue of whether the contents of the Convention concerned were being complied with. In the view of the Employer members, one of the reasons why some governments were not submitting reports was because they could not implement the provisions of ratified Conventions in their national legislation and practice. The Employer members concluded that these countries should be urged to make every effort to supply reports on ratified Conventions, as it was often the same countries which failed to comply with their reporting obligations.

The Worker members considered that respect for the obligation to supply reports was the crucial element on which the ILO's supervisory machinery was based. The information contained in these reports had therefore to be as detailed as possible. It was regrettable to note that the changes made in recent years to the reporting procedure to simplify this task for governments had not so far improved the situation. The countries which had not fulfilled their obligations to supply a report held an unfair advantage in that the absence of a report made it impossible for the Committee to examine their national law and practice in respect of ratified Conventions. Consequently, the Committee should strongly urge member States to take the measures necessary to respect this obligation in the future.

A Government representative of Bosnia and Herzegovina explained that the delay in communicating reports under article 22 of the Constitution of the ILO was due to difficulties of internal coordination within Bosnia and Herzegovina. This situation had been noted at the conference on the implementation of the peace agreements, held recently in Brussels. From 8 to 15 May 2000, the ILO had organized a training seminar on the application of international labour standards and on the procedures for the submission of reports. In the context of this technical assistance, it had been decided that the two entities of Bosnia and Herzegovina would transmit the reports required to the Minister of Foreign Affairs, who would subsequently be responsible for communicating them to the ILO. She expressed gratitude on behalf of her Government to the ILO for taking the initiative of supplying the above assistance and hoped that her country would be able to submit the reports due at the earliest possible date.

A Government representative of Burkina Faso referred to paragraphs 82 (failure to supply reports for the past two years or more on the application of ratified Conventions) and 93 (failure to supply information in reply to comments made by the Committee of Experts) of the report of the Committee of Experts and declared that his country had always regularly fulfilled its constitutional obligations. The failings which had been pointed out by the Committee of Experts concerned the year 1999 and were due to administrative constraints. His Government regretted that this delay had taken place, thus impeding the work of the Committee of Experts, and undertook to respect its obligations under article 22 of the ILO Constitution as soon as possible.

A Government representative of Djibouti stated that his delegation was aware of the delay in the communication of the reports and apologized for it. This delay was due to internal difficulties faced by the administration, which was currently undergoing in-depth restructuring. During the visit of the members of the multidisciplinary advisory team based in Addis Ababa in March 2000, it had been decided that, with the technical support of the ILO, the Government would make up a large part of its delay in this field by the end of summer. However, in order to allow a larger number of civil servants to become involved in the handling of reports on ratified Conventions, the volume of which was very considerable, the Government hoped that the ILO would provide the Labour Ministry with special long-term training in the drafting of reports.

A Government representative of Georgia pointed out that his country did not wish to place itself outside the ILO and its activities. In his country, problems with the submission of reports were mainly due to defects on the administrative level. He assured the Committee that his country would fulfil its reporting obligations which it was currently unable to do because of technical reasons. In this regard, his Government relied on ILO technical assistance to comply with its reporting obligations.

A Government representative of Sao Tome and Principe stated that his Government recognized the obligations incumbent upon it, but due to problems of internal organization and technical reasons, as well as the existence of a certain degree of administrative instability, it had been unable to comply with them. His Government undertook to take all the measures necessary to comply with its obligations, particularly regarding the supply of reports, and he expressed his interest in obtaining the technical assistance of the ILO.

A Government representative of Sierra Leone informed the Committee that his country's failure to submit reports was not due to lack of political will but rather to the fact that over the last nine years Sierra Leone had been engulfed in a civil war which had witnessed the wanton destruction of lives and property including the Ministry of Labour. Despite the extremely difficult environment in which his Ministry had had to work, he was very much concerned by his country's failure to report on ratified Conventions. A letter explaining this situation had already been addressed to the ILO. Now that his country was engaged in a reconstruction process, it was his firm intention to ensure that his Government fulfilled its reporting obligations in future. His Government had therefore asked for ILO technical assistance to remedy the situation. With the support of the ILO/MDT based in Dakar, the Ministry archives had been rebuilt and a complete set of the first and last article 22 reports were available and complete. He reiterated his Government's previous request that training on standards be provided to the officials from the Ministry of Labour as well as to the social partners.

A Government representative of the United Republic of Tanzania assured the Committee that her Government recognized the importance of supplying reports on ratified Conventions, and undertook to submit, as soon as possible, reports on the remaining

Conventions. In this regard her Government had communicated reports on the Forced Labour Convention, 1930 (No. 29), Minimum Age (Industry) Convention (Revised), 1937 (No. 59), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Abolition of Forced Labour Convention, 1957 (No. 105), Minimum Wage Fixing Convention, 1970 (No. 131), Prevention of Accidents (Seafarers) Convention, 1970 (No. 134), and Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Furthermore, dialogue between the Ministry of Labour and the social partners had ensued for the purpose of ratification of the four remaining unratified core Conventions. She was happy to report that these efforts were fruitful and that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), had been ratified earlier this year, and that the Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and Worst Forms of Child Labour Convention, 1999 (No. 182), had been discussed by the Government and the social partners. The remaining three Conventions would be ratified before the end of the year 2000. Finally, she pointed out that failure to comply with reporting obligations was also due to resource constraints and that her Government would appreciate technical assistance from the ILO in terms of training personnel in the standards field on a continuous basis.

The Worker members observed that only a few of the countries which had been invited to speak on their failure to supply reports had actually done so, while the other countries were absent or not accredited to the Conference. These countries had referred to several factors which explained their failures, such as crisis situations or the conflicts which had been experienced in their countries, the lack of competent staff, the lack of sufficient resources, administrative instability and structural reforms. Nevertheless, it was important to note in this respect the commitments which had been undertaken and the promises which had been made by various speakers. The Committee should continue to urge member States to take all the necessary measures to fulfil this obligation. The need to strengthen the supervisory system, which had been repeatedly underlined by many speakers, would not be put into practice if governments did not respect the obligation to supply reports on the Conventions that they had ratified. Finally, the Committee should remind governments that they could call for the technical assistance of the ILO.

The Employer members endorsed what had just been concluded by the Worker members. The explanations given by some governments for not complying with their reporting obligations were well known to this Committee. With regard to the Government representative of Burkina Faso who had indicated that his Government had only failed to supply reports in 1999, the Employer members recalled that his country had been mentioned in the section of the report which enumerated those countries not having sent reports for a number of years. The Employer members suggested that sanctions could be imposed in cases where reports had not been sent for five or more years. Of course, if such a decision were to be taken, a constitutional amendment would be required. Serious consideration should be given to this idea and it was their hope that it would oblige countries to be more disciplined in complying with their reporting obligations.

The Committee recalled the fundamental importance of the supply of reports on the application of ratified Conventions, not just of their supply as such, but of doing so within the stipulated time limit. This obligation constituted the foundations of the supervisory system and the Committee expressed its firm hope that the Governments of Afghanistan, Armenia, Bosnia and Herzegovina, Burkina Faso, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Georgia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, United Republic of Tanzania (Zanzibar), The former Yugoslav Republic of Macedonia and Uzbekistan which had not, to date, submitted reports on the application of ratified Conventions would do so as soon as possible. The Committee decided to mention these cases in an appropriate section of its General Report.

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

The Employer members noted with regret the number of countries that had failed to supply first reports. It was difficult to understand the reason for this problem since, if a member State ratified a Convention, it was assumed to have already examined its law and practice in the relevant area and should not therefore experience any difficulty in compiling its first report. The Employer members stressed the particular importance of first reports, which detailed any changes a country had made to its legislation and practice in order to comply with the Convention ratified. Moreover, first reports were the basis on which the Committee of Experts made its initial assessment on the application of ratified Conventions. Accordingly, the Employer members urged that the Committee prompt the countries concerned to make a special effort to supply the first reports as soon as possible.

The Worker members endorsed the statement made by the Employer members that member States must carefully examine the situation in their countries prior to ratifying a Convention. It was therefore difficult to understand why a country would delay in submitting its first report. First reports were especially important because they provided the basis for the Committee of Experts' initial evaluation of the application by a country of ratified Conventions. Moreover, supply of first reports helped countries to avoid misunderstandings regarding the application of Conventions from the beginning. The Worker members therefore considered that first reports were essential for the functioning of the supervisory system and urged the member States concerned to make a special effort to comply with their obligation to submit first reports on the application of ratified Conventions.

A Government representative of Georgia recognized the fundamental importance of the two Conventions concerned: Conventions Nos. 105 and 138. He noted that Georgia was preparing its first reports, but that this process had been delayed for technical reasons. His Government would soon submit its first reports on these Conventions with ILO assistance. Finally, he welcomed the introduction of sanctions against member States which failed to comply with their constitutional obligations.

The Employer members expressed regret that only one country had provided information to the Conference Committee on its failure to supply the first reports on ratified Conventions, and noted that this situation would be mentioned in the Committee's conclusions. The Employer members hoped that the Office would contact the countries concerned and remind them of their obligation to submit first reports.

The Worker members endorsed the remarks made by the Employer members, noting that countries often gave the same reasons for failing to fulfil their reporting obligations. It was not acceptable that first reports had been due on ratified Conventions since as long ago as 1992. These constituted serious shortcomings and the Worker members noted that the obligation to submit first reports was of crucial importance. If there were special problems in meeting these obligations, the member States should promptly inform the Office in order to obtain the necessary assistance. The Worker members hoped that the Office would contact the member States to determine their reasons for failing to provide the requested information.

The Committee noted the information supplied and explanations given by the Government representative who took the floor. It reiterated the crucial importance of submitting first reports on the application of ratified Conventions.

The Committee decided to mention these cases: namely *since 1992:* Liberia (for Convention No. 133); *since 1995:* Armenia (for Convention No. 111), Kyrgyzstan (for Convention No. 133); *since 1996:* Armenia (for Conventions Nos. 100, 122, 135 and 151), Grenada (for Convention No. 100), Uzbekistan (for Conventions Nos. 47, 52, 103 and 122); and *since 1998:* Armenia (for Convention No. 174), Equatorial Guinea (for Conventions Nos. 68 and 92), Georgia (for Conventions Nos. 105 and 138), Mongolia (for Convention No. 135, Uzbekistan (for Conventions Nos. 29 and 100), in the appropriate section of the General Report.

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

The Employer members noted that the Governments' obligation to submit replies to comments made by the Committee of Experts formed part of the general reporting obligations of member States and expressed concern at the increasing number of countries which failed to supply replies to comments made by the Committee of Experts. Noting that a number of reports had been transmitted to the ILO in the period following the publication of the General Report, the Employer members nevertheless expressed concern at the number of countries failing to comply with this obligation and stressed the urgent need for the countries concerned to do so.

The Worker members noted that incomplete, unclear or late responses hampered the task of the Conference Committee and of the Committee of Experts. Governments must therefore take their reporting obligations seriously. The Worker members shared the concerns expressed by the Employer members and hoped that they would not hear the same explanations this year concerning the reasons why governments were unable to respond to the comments made by the Committee of Experts.

A Government representative of Bosnia and Herzegovina stated that the information supplied earlier was unfortunately still valid for the present. Five years after the end of the war, Bosnia and Herzegovina still needed technical assistance from the Office for the submission of its reports.

A Government representative of Burkina Faso stated that the information supplied earlier concerning the reasons for the failure

to supply information in reply to the comments of the Committee of Experts remained valid.

A Government representative of the Central African Republic pointed out that his Government had discharged its obligation to supply information in reply to the comments of the Committee of Experts in February 2000.

A Government representative of Denmark noted that the Faeroe Islands were independent in the area of social politics, and that, despite his Government's best efforts, it could not require the Faeroe Islands to comply with its reporting obligations. He nevertheless assured the Committee that his Government would continue to do its utmost to encourage the Faeroe Islands to supply the reports due.

A Government representative of France noted that his country constituted a type of a borderline case. As Conventions ratified by France had been declared applicable to several non-metropolitan territories by virtue of article 35 of the Constitution, the French Government had had to submit a very high number of reports on the application of Conventions (234 reports in 2000). Possible additional ratifications by France would further increase this number, as well as the scope of the dialogue with the Committee of Experts. Far from Geneva, reports on the application of ratified Conventions and exchanges with the Committee of Experts may seem to be of lesser importance. Without in any way providing a justification, the realities were such that the French Government's efforts to supply the reports due were affected by coordination difficulties with its numerous and dispersed counterparts, as well as a lack of administrative rigour and bad habits. These realities did not correspond to any desire by the French Government to dissimulate anything. The situation noted by the Committee of Experts could not be justified. As he was particularly concerned with the negative consequences that the failure to supply reports or information might have on the supervisory system, he reaffirmed his Government's intention to comply with all its obligations, so that the situation would improve considerably in the future.

A Government representative of Guinea-Bissau stated that his Government had taken note of the comments of the Committee of Experts and undertook to take steps to reply to these comments. An ILO mission was soon to arrive in his country with the aim, inter alia, of dealing with this matter. The Ministry of Public Administration and Labour had been restructured to enable the competent bodies to fulfil their obligations in line with the new reconstruction process in the country.

A Government representative of the Islamic Republic of Iran indicated that her Government's reports on the Conventions in question were being prepared and finalized and that the reports would be transmitted to the ILO within the next three months.

A Government representative of Jamaica regretted that his country had failed to submit timely reports. However, he pointed out that it had been impossible for his Government to fulfil its reporting obligations due to staff changes in the Ministry of Labour. These changes had taken place at critical times for the section responsible for dealing with ILO matters. The situation had now been corrected and reports would be submitted to the ILO within the next three months. He thanked the ILO's Caribbean Office for its assistance and assured the Committee of his Government's full compliance in the future.

A Government representative of Kenya expressed his regret that his country had not submitted timely responses to comments made by the Committee of Experts. He noted that his Government had submitted some of the replies and he assured the Committee that the remaining replies would be transmitted as soon as possible. The delays were not deliberate, but were caused by a high turnover rate among the staff trained to handle ILO reporting responsibilities. Another equally important factor had been the delays experienced in receiving replies from the relevant departments. In order to rectify the situation, his Government had proposed establishing an interministerial committee, to handle ILO matters, consisting of representatives of the Labour Ministry, the Attorney General's Office and the Ministry of Foreign Affairs. The ILO Area Office in Dar-es-Salaam had been asked to provide capacity-building training for members of the interministerial committee and a sensitization workshop had also been requested for staff from other ministries. In order to prevent a recurrence of the problem caused by staff turnover, the ILO had been asked to provide assistance in training three officers to handle ILO reporting obligations, in the hope that they would also pass on their skills to other staff. Kenya remained committed to the ideals of the ILO and would continue to comply with its constitutional obligations.

A Government representative of the Libyan Arab Jamahiriya stated that his country attached special importance to the Committee of Experts' reports, and was always ready to engage in a dialogue with the Committee of Experts on his country's law and practice relating to ratified Conventions. He noted that his Government had taken measures to facilitate the preparation of responses to the Committee of Experts' comments, including establishing a body composed of labour experts who represented relevant sectors of industry as well as employers' and workers' organizations. This body was responsible for preparing periodic responses to the Committee of Experts' comments, examining Conventions approved by the International Labour Conference to determine conformity with the national legislation and determining whether domestic legislation should be amended to conform with ratified Conventions. The Conventions concerned had been examined by this body and reports would be transmitted to the Committee of Experts. He also noted that the political constraints that had been imposed on his country for seven years had impeded the exchange of information.

A Government representative of Malaysia explained that technical reasons had prevented the supply of information in reply to comments by the Committee of Experts. Although the replies had been drafted by the Ministry of Labour, they had not been sent on by other authorities. His country undertook to supply the requested information in the near future.

A Government representative of the Netherlands (Aruba) expressed regret that his country had once again been called upon to explain its position concerning its failure to fulfil its obligations to supply information in reply to comments made by the Committee of Experts. He reiterated the information provided in previous years to the effect that Aruba was a full and equal member of the Kingdom of the Netherlands and was therefore itself fully responsible for fulfilling its international obligations. The European partner of the Kingdom could therefore do little when Aruba fell behind in fulfilling its reporting obligations. However, he reported that during recent contacts with Aruba he had been told that a number of reports and answers to the comments of the Committee of Experts were on the point of being sent. He nevertheless reiterated his great regret that a country such as his own, which prided itself on being fairly efficient, had failed to discharge important obligations and he hoped for an improvement in the near future.

A Government representative of Nigeria observed that it had been difficult for his country to supply reports during the period 1994-98 because of the political situation in the country, which had adversely affected its labour administration. The dissolution of the National Executive Council of the Nigeria Labour Congress had made the National Labour Advisory Council (NLAC) moribund for that period. In the absence of the NLAC, it had not been possible to consult with employers' and workers' organizations on the reports due to the ILO. However, he affirmed that his Government had amended the anti-labour legislation which had been commented upon by the Committee of Experts. He reported that the NLAC had recently been reconstituted and would meet in due course to deal with all outstanding labour matters. He appealed for cooperation and support in his country's efforts to sustain its nascent democracy.

A Government representative of Sao Tome and Principe stated that he regretted this situation, particularly since his Government had been cited on three occasions in the list of automatic cases. He also referred to the Conventions ratified by Sao Tome and Principe, as well as several laws enacted to implement these Conventions. Finally, he recalled that the main reasons for the failures noted by the Committee of Experts were of an administrative, technical and organizational nature. His Government undertook to remedy the situation.

A Government representative of Sierra Leone explained that the failure to supply information in reply to comments made by the Committee of Experts was not due to a lack of political will by his Government. The long-lasting conflict in his country had made it impossible to provide any comprehensive replies. However, he expressed the firm intention of fulfilling the respective obligations in future.

A Government representative of the Slovak Republic observed that his country had been obliged to supply 15 reports to the ILO for the year 1999 on the measures which had been taken to give effect to ratified Conventions. Seven reports had been supplied in response to requests by the Committee of Experts on Conventions Nos. 11, 42, 111, 138, 144 and 161. However, reports had not been provided on several other Conventions. He explained that his country had experienced staffing problems in the elaboration of the above reports. However, recent information indicated that the requested reports on Conventions Nos. 12, 17, 89, 130, 148, 155 and 160 had been completed and would be communicated to the ILO in July or August after translation into English or French. He apologized for the delay.

A Government representative of Swaziland explained that he could neither confirm nor deny receipt of the requests for the reports from the Committee of Experts. This was because the office of the Commissioner of Labour was located some distance from that of the Principal Secretary of the Ministry. He therefore suggested that all ILO correspondence should in future be addressed to the Principal Secretary, but using the address of the Commission-

er of Labour, who would take the necessary action on all such official correspondence. His country undertook to check whether the requests from the Committee of Experts had reached the office of the Commissioner of Labour and either take appropriate action to send the reports to the ILO or inform the ILO that they had not been received.

A Government representative of the United Republic of Tanzania apologized for the failure to comply with reporting obligations, which had been due to human resources problems, as she had explained previously with regard to Zanzibar. In relation to Conventions Nos. 17 and 144, she observed that the request for information by the Committee of Experts had arisen mainly from the poor drafting of the reports submitted and she undertook to resubmit fuller reports in the near future. With regard to Conventions Nos. 63 and 137, she said that technical assistance might be required for their application. Finally, with regard to Convention No. 148, she acknowledged that an inadequate report had been submitted following the reform of the labour legislation. She re-emphasized the importance of replying to the comments of the Committee of Experts and undertook to supply reports promptly once technical assistance had been provided.

A Government representative of Trinidad and Tobago apologized for the adverse effects her country's failure to supply the requested reports had had on the work of the supervisory mechanisms. She reaffirmed that her Government was very mindful of the comments made by the Committee of Experts and had actively been seeking to take the necessary action to bring its law and practice into line with the provisions of ratified Conventions. The delay in supplying the requested reports was therefore deeply regretted. The Ministry of Labour in her country was endeavouring to find its own equilibrium in an era of modernization and strategic planning. Her Government undertook to provide comprehensive responses within the deadline period.

A Government representative of Uganda noted that although his country had supplied a total of 14 reports, it had failed to provide the reports requested on Conventions Nos. 105, 144, 154, 159 and 162. While he was in Geneva, he would contact the Office to review the action necessary in this regard as soon as possible. There were a number of technical reasons why his country had not fulfilled its reporting requirements. In the first place, his Government had recently carried out an administrative restructuring, with a downsizing of the staff. Difficulties had also arisen in coordination between the ministry responsible for labour matters and other ministries, which were often slow to provide the necessary information. He added that the process of reforming the labour legislation had taken a long time. However, the Workers' Compensation Act had been approved by parliament earlier in the year and was now ready to receive presidential assent. Technical assistance had been received from the ILO and UNDP concerning other labour legislation. He thanked the ILO for its support and technical assistance and looked forward to continued cooperation in the future.

A Government representative of Yemen stated that his Government had a strong will to ratify international labour Conventions. The question of the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), had been submitted to the competent authorities. The instrument of ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), had been sent to the ILO and the Government had taken all the necessary measures for the ratification of the Minimum Age Convention, 1973 (No. 138). The Government ensured the supply of reports on ratified Conventions, but it required technical assistance from the Office for the proper fulfilment of these obligations. In recent years, Yemen had made great progress in the execution of its reporting obligations. The Government had thoroughly examined the observations which the Committee of Experts had addressed to it and had submitted a response to the ILO on that subject. He apologized for the delays incurred, which would be remedied as soon as possible.

The Employer members noted that a variety of explanations had been provided by the governments concerned with regard to their failure to reply to the comments made by the Committee of Experts. In some cases, rather bizarre explanations had been given. The number of countries listed, and the fact that one of them had failed to reply to the comments made on 29 Conventions, meant that the situation penalized the work of the supervisory machinery. They also noted the indications made by many governments that a lack of resources and rapid changes in personnel had caused their failure to reply to the comments of the Committee of Experts. In this respect, they recalled, in the case of changes in the staff dealing with matters related to international labour standards, the relevant professional competence needed to be transmitted. It would not be justified to request technical assistance from the ILO on every occasion that the personnel changed. They emphasized that the obligation to reply to comments made by the Committee of Experts formed part of the general reporting obligations of governments. Finally, if a decision were to be taken to introduce sanctions in cases of serious failure to comply with reporting obligations, these sanctions should also be applicable in the event of failure to reply to the observations and direct requests of the Committee of Experts.

The Worker members observed that they had been provided with the same explanations as in the past concerning the reasons why governments had been unable to reply to the comments made by the Committee of Experts. Several governments had not spoken on the issue, despite the opportunity afforded to them. Additional steps needed to be taken by these governments to meet their reporting obligations and it was hoped that the situation would improve next year. They emphasized that incomplete reports affected the ability of the Committee of Experts to carry out its functions effectively. They therefore urged the governments concerned to take all the necessary measures.

The Committee took note of the diverse information provided and the explanations given by the Government representatives. It insisted upon the great importance, for the continuation of an essential dialogue, of communicating clear and complete information in response to comments made by the Committee of Experts. It reiterated that this was an aspect of the constitutional obligation to report. In this connection, it expressed its profound concern at the very high number of cases of failure to supply information in reply to comments made by the Committee of Experts. It reiterated that assistance from the ILO could be requested by governments in order to overcome any difficulties they might be facing.

The Committee urged the governments concerned, namely Afghanistan, Antigua and Barbuda, Bosnia and Herzegovina, Burkina Faso, Central African Republic, Comoros, Democratic Republic of the Congo, Denmark (Faeroe Islands), Djibouti, Equatorial Guinea, Fiji, France (French Guiana and St. Pierre and Miquelon), Gabon, Guinea-Bissau, Islamic Republic of Iran, Jamaica, Kenya, Kyrgyzstan, Libyan Arab Jamahiriya, Malaysia, Netherlands (Aruba), Nigeria, Saint Lucia, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Swaziland, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Uganda and Yemen to spare no effort to provide the information requested 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]

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

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

Bolivia. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 159.

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

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

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

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

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

Jamaica. Since the meeting of the Committee of Experts, the Government has sent the first report of the application of Convention No. 144.

Mali. Since the meeting of the Committee of Experts, the Government has sent the first reports concerning the application of Conventions Nos. 141 and 151.

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

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

[1] The list of the reports received is to be found in part I C of the Report.

Saint Lucia. Since the meeting of the Committee of Experts, the Government has sent the report on Convention No. 98.

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

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

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

Convention No. 29: Forced Labour, 1930

India (ratification: 1954). A Government representative noted the comments of the Committee of Experts and recalled that the Government had submitted two reports to the Committee, one of which responded to the matters raised by the International Confederation of Free Trade Unions (ICFTU). He wished to address the three major issues raised by the report: bonded labour, child labour, and prostitution and sexual exploitation.

With regard to bonded labour, he recalled the historical background of India's efforts to combat this problem. He noted that the Karachi Congress in 1931 had addressed the issue of the abolition of serfdom, long before India had ratified Convention No. 29. Furthermore, article 22 of the Indian Constitution of 1949 prohibited bonded labour, and in 1954 India had ratified Convention No. 29. Twenty-two years later, the Bonded Labour System (Abolition) Act, 1976 and the Bonded Labour System (Abolition) Ordinance 1975 were passed, as were a number of local ordinances and regulations prohibiting bonded labour. The fight against bonded labour had been a prime objective of past governments, and figured prominently in the Twenty Point Programme for the Nation under the Prime Minister Indira Gandhi.

It was of paramount importance to arrive at a precise definition of bonded labour. He noted that bonded labour was characterized by an unequal exchange system, where one person rendered his services or the services of any of his family members under compulsion to another in order to pay off a debt, and as a consequence was denied freedom of movement, choice of employment, and minimum wage. He also stressed that it was difficult to identify bonded labourers and to collect reliable statistics on them. Section 13 of the Bonded Labour System (Abolition) Act provided for the establishment of vigilance committees at district and subdivisional levels to maintain close surveillance on the occurrence of bonded labour in the area. However, section 13 did not prescribe the procedure for these vigilance committees to identify bonded labourers. Drawing on his personal experiences as a socio-legal investigator of the Supreme Court on bonded labour matters, the speaker observed that the orthodox approach of asking persons whether they were bonded labourers would normally not elicit a reliable response, since many such persons were too intimidated or ignorant of their rights under the law to have confidence in the investigator. Only through a non-traditional and non-confrontational approach could investigators win the trust of bonded labourers and hear their stories. The establishment of reliable statistics depended on the orientation and training of local magistrates and members of the vigilance committees to adopt such an approach when investigating bonded labour. The establishment of reliable statistics was also complicated by the numerous languages and dialects used in India and the frequent migration which characterized the informal sector.

Once bonded labourers had been identified, the next step was their release, which also presented certain difficulties. He pointed to a recent Supreme Court decision which ruled that it was not sufficient to prove a creditor-debtor relationship in order to prevent a relationship of labour without remuneration being considered as bonded labour. The ruling assumed that where a labourer supplied his labour free, he or she was obliged to do so, due to an advanced loan or some other exploitative economic arrangement. This judgement had been communicated to the districts and subdivisions and was hoped to facilitate the release of bonded labourers.

It was also essential to understand that the problem of bonded labour was inextricably tied to the greater socio-economic problems of unemployment, landlessness, poverty, and migration. He stated that despite the enormous political will of the current government, it had not succeeded in eradicating poverty. Therefore, the full eradication of bonded labour would only be possible through a holistic and parallel approach to dealing with the nation's economy.

Rehabilitation was the next important step after a bonded labourer had been identified and released. The speaker recalled that the Bonded Labour Rehabilitation Scheme of 1978 provided for assistance and funding for rehabilitation measures, which included the allotment of land, the development of land already owned, credit, subsidized housing, health services, skill training and the support of women and children. He recalled that up to March 1999, over 200,000 bonded labourers had been released and rehabilitated, and that 17,000 were in the process of being rehabilitated. Despite such progress, further funding and research was needed.

Concluding his statements on the issue of bonded labour, the speaker indicated that a full-fledged division in the Ministry of Labour was devoted to bonded labour, and that screening committees had been established which would assure that funds released for programmes for the eradication of bonded labour were efficiently used. The Ministry of Labour also ensured that any complaints received regarding bonded labour were communicated to the district magistrate, with strict deadlines for a response, and follow-up procedures to monitor complaints. In this regard, he stressed that the federal Government's role was to coordinate a national policy on bonded labour, but that it was ultimately the State's responsibility to ensure that such policies were implemented. Finally, only close collaboration with NGOs would assure the full outreach of such programmes.

Turning to the problem of child labour, the Government representative emphasized the national Government was totally committed to the elimination of child labour. He recalled that the Children (Pledging of Labour) Act, 1933 prohibited parents from mortgaging the services of their children, and that the Employment of Children Act, 1938 restricted child labour in a number of areas. Furthermore, pursuant to India's ratification of six of the ILO Conventions on child labour, the Child Labour (Prohibition and Regulation) Act, 1986 prohibited the employment of children under the age of 14 in hazardous industries. Parts A and B of this Act prohibited child labour in 64 industries considered as hazardous, and the Child Labour Technical Advisory Committee established under section 5 of the Act had recommended another nine industries as hazardous. As with bonded labour, it was difficult to establish reliable statistics on child labour. In this respect, he pointed out that the Supreme Court judgement of 10 December 1996 in Writ of Petition 465 of 1986 provided for countrywide surveys of child labour on the district level and reiterated the principle of free and compulsory education for children under the age of 14. This judgement had been communicated to officials at the local level and funds had been placed at the disposal of all 535 districts for conducting the survey, which had been completed and the report of which had been submitted to the Supreme Court on 31 May 1997.

He recalled that 93 national child labour projects had been made operational with the purpose of identifying, releasing, and rehabilitating child labourers. In the context of these programmes, 3,000 special schools had been established and 3,000 teachers had been appointed to provide education, skill training, health care, and other rehabilitation services to released child workers. Moreover, India subscribed to the principle that education for children between the ages of 5 and 14 was a fundamental human right. He regretted that the proposed 83rd Constitutional Amendment, which sought to make education a fundamental right and which provided for compulsory and universal primary education, had not been carried to its logical conclusion due to a number of reasons, but hoped that similar efforts would succeed in the future.

As with bonded labour, he observed that child labour was closely linked to lack of education, landlessness, assetlessness and poverty. The process of economic development caused significant social upheaval, and as a result, the very participants in development could become victims of the development process. He lamented the fact that there were not enough schools and teachers to provide free, compulsory and universal primary education to the over 600,000 villages in India. Nonetheless, he stressed that the Government was making a planned, coordinated, and concentrated effort, with the assistance of all branches of the Government, to root out child labour and to provide for educational opportunities for all children. He announced that the first priority of the Government was to release children employed in hazardous work, and the second priority was to assist children employed in non-hazardous work. Another issue of great importance was the release and rehabilitation of children employed in prostitution, pornography, and in illegal drug trafficking. He acknowledged that child labour remained a big problem in India, but was confident that government efforts would make progress in finding a solution to the problem. In closing, he pointed to the signing of a Memorandum of Understanding between India and IPEC in 1992, which was renewed on 17 February this year. With the assistance of IPEC and the participation of workers, employers, and NGOs, a number of programmes had been established to fight child labour, and he hoped continued close cooperation with IPEC would bear further results in the future.

Another Government representative noted the Committee of Experts' concerns relating to children being used for prostitution purposes. The rules and regulations in place in India were very strict in addressing this issue and defined sex with girls as rape, whether or not the girl had consented. He therefore stressed that the national legislation was fully in conformity with both Conventions Nos. 29 and 182. However, India was a developing country of 1 billion people with problems of poverty and unemployment, and,

therefore, circumstances in the country might result in the exploitation of children despite the legal measures in place. Accordingly, it was necessary to strengthen the enforcement mechanisms so that all complaints would be properly investigated and all offences punished.

Noting the lack of accurate statistics on the number of prostitutes in India, he cited a survey conducted by the Central Social Welfare Board in six selected cities, which found that there were 70,000 to 100,000 prostitutes in India and that 30 per cent of this number was under the age of 20 years. He noted that 4.77 per cent of this population were from neighbouring countries. Poverty was the main factor which led to prostitution. The illiteracy rate among this population was 71 per cent. Families of prostitutes were primarily unemployed or were in unskilled employment.

With regard to the legal framework established to eradicate this problem, he noted that article 23 of the Indian Constitution prohibited trafficking in human beings. Moreover, India had ratified the UN Convention on the Rights of the Child as well as the UN Convention on the Elimination of All Forms of Discrimination Against Women. It had also enacted the Immoral Trafficking Prevention Act, which provided that sex with children would be treated as rape and persons accused of this criminal offence would be tried in the criminal courts. The Act contemplated the rescue and rehabilitation of the victims of this crime. The Indian Penal Code also contained provisions regarding the abduction of children, rape and other related offences. He noted that, in response to this problem, the Government had involved all NGOs in the country in efforts to identify and resolve abuses, due to the magnitude of the problem and the Government's limited resources. The Government also focused on a two-pronged strategy whose objectives were to improve the economic resources of the families where prostitutes were found and to conduct an awareness-raising campaign to alert the public to this problem. The Government's main focus in this regard was on prevention. In closing, he noted that the provincial government of Uttar Pradesh had commissioned a study on child prostitution and he assured the Committee that the study would be made available to the ILO once it was completed.

The Worker members thanked the Government representatives for the extensive additional information supplied to the Committee and requested that all of this information be submitted to the Committee of Experts in writing so that it could be examined. At present they concluded that there had been little progress made in the case. While there appeared to be some attempts to develop a policy and coordinated strategy involving central and state governments, more needed to be done. Some legislation required further review and enforcement mechanisms were weak. The problem of engaging NGOs remained, since these organizations reported that authorities were unhappy with their presence and at times antagonistic towards them. The Worker members felt that the Government was still minimizing the problem of forced labour in India by insisting, even in the face of overwhelming evidence, that the numbers of such workers were small. This refusal to accept that there was a problem of grave magnitude would impede efforts to find a speedier solution to the problem.

The Worker members noted that the case before the Committee was a very old one. India had ratified the Convention in 1954 and the Committee of Experts had been commenting on this case since 1966. It had been discussed in the Committee over the past 14 years and had been mentioned in a special paragraph in 1994. India's Bonded Labour System (Abolition) Act had been in existence for 24 years. Despite the requirements under Article 1(1) of the Convention that ratifying countries undertake to eradicate forced or compulsory labour in all its forms "within the shortest possible period", little progress had been achieved in this area. While acknowledging India's difficult circumstances, which included a large population and poverty, the Worker members nevertheless stated that surely some progress should have been made in half a century.

In its observation, the Committee of Experts identified three areas of forced labour: bonded labour, child forced labour and prostitution and sexual exploitation of women and young girls. One persistent problem noted by both the Committee of Experts and this Committee was the lack of reliable statistics on the number of bonded labourers in India. The figures cited by the Government representative were inconsistent with those found in its own survey, conducted by the Gandhi Peace Foundation and the National Labour Institute in 1978-79, which cited a figure of 2.6 million. Another survey commissioned by the Indian Supreme Court in 1994 found that there were 1 million bonded labourers in the state of Tamil Nadu alone. Other sources identified 5 to 10 million such labourers.

The Worker members strongly supported the Committee of Experts' request that the Government undertake a comprehensive survey using valid statistical methodology, since accurate data was essential to develop and assess effective systems to combat the problem. The Worker members urged the Government to carry out this survey immediately and stated that, if technical assistance was necessary to conduct the survey, the ILO could certainly provide it. The Worker members stressed the need to determine the extent of the problem in order to allocate the resources necessary to eradicate it. Further, an effective system of inspection was needed and the Government was encouraged to work with the social partners and other organizations to strengthen its work.

Referring to the Committee of Experts' comments regarding bonded labourers rehabilitated under the centrally sponsored scheme in Tamil Nadu, Uttar Pradesh and Orissa, the Worker members believed that the number rehabilitated (5,960) was too low in light of the total number of bonded labourers in India, and asserted that more should be done. With regard to the comments on subsidies and other benefits proposed for bonded labourers, the Worker members asked the Government to provide details on the number of rehabilitated bonded labourers who had benefited from these benefits and how much had been set aside for this purpose.

The Worker members referred to the Committee of Experts' comments that state governments had been asked to form vigilance committees, as required under section 13 of the Bonded Labour Act, to enable them to maintain close and constant supervision over the problem. They asked the Government to supply detailed information on those states that had set up such committees, including on how the committees are staffed and their manner of operation, on the number of complaints received, the time period for resolution of complaints and public awareness-raising measures taken. Vigilance committees could constitute an important tool to combat forced labour at the grass-roots level. However, despite the Government representative's statements, the committees did not appear to be working well. As an example, Anti-Slavery International, an NGO, had reported an incident in the state of Punjab, where authorities had failed to intervene to enforce the law in relation to complaints filed with the District Magistrate on behalf of 11 women bonded labourers. This case and others had been taken up by the NGO, but to date it appeared the women had not been freed nor had the landlords been punished. It was clear that the enforcement mechanisms in India must be strengthened and there must be guidelines to ensure that the Supreme Court's ruling was applied.

In respect of child bonded labour, the government statistics did not indicate what percentage of bonded labourers were children, although information from NGOs noted that many children were working as bonded labourers, often to pay off their parents' debt, despite national legislation preventing parents from engaging in the practice of pledging their children. Further, referring to the Committee of Experts' comments on the lack of inspections of small production units under the Factories Act, the Worker members considered the exclusion of such units from coverage under the Act to constitute a violation of the Convention. They urged the Government to amend the law to protect bonded labourers employed in such units. Noting that article 24 of the Indian Constitution prohibited the employment of children under 14 in any factory, mine, or other hazardous employment, the Worker members asked the Government to provide information on the number of employers who had been prosecuted for employing children in violation of this article.

Referring to the Committee of Experts' comments on the serious problem of child prostitution and sexual exploitation of women and girls, the Worker members noted the lack of reliable statistics on the number of prostitutes, including child Devadasis and Joginis. Although the Worker members were disappointed that the Central Advisory Committee was only now thinking of framing recommendations and a plan of action for the rescue and rehabilitation of child prostitutes, this was still a positive effort. The Worker members urged the Government to supply full information to the Committee on such measures, particularly on the steps being taken and the resources being allocated to educate child labourers and child prostitutes as part of the rehabilitation process.

Given the Government representative's references to legislation prohibiting child prostitution, the Worker members requested the Government to supply information on the number of persons that had been prosecuted under this legislation. They agreed with the Government that bonded labour was an outrage to humanity, but considered that the Government had not accorded sufficient priority to the matter and had not moved quickly enough to resolve the problem.

The Employer members thanked the Government representative for the extensive information provided to the Committee which had placed the comments of the Committee of Experts into context. They requested the Committee of Experts to provide a more structured picture of the cultural and legal situation in India in future reports to expedite the discussion of the Committee in this regard. The Committee's most recent discussion in this case had involved the same issues that had been discussed previously: bonded labour, child labour, and prostitution and sexual exploitation of women and girls. The problems were deemed to be of such magnitude that this Committee placed its concerns in a special paragraph in 1994.

The Employer members referred to the Committee of Experts' observation that the vigilance committees were not working well. Noting the Government representative's statement that a certain urgency and priority was being given to this problem, the Employer members requested information on the number of federal and state civil servants working on a day-to-day basis, particularly in the field, attempting to identify and eradicate practices of bonded labour. With regard to the lack of reliable statistics, the Government representative had confirmed the difficulties involved in speaking with the parties concerned. However, the Employer members agreed with the Worker members that it was necessary to ascertain the number of people affected in order to have a basis for evaluating the situation and therefore requested the Government to supply the results of the survey conducted in this regard.

Commenting on the increase in bonded labour, the Employer members considered the rehabilitation projects initiated by the Government to have had limited success. They asked the Government to supply information on the amount of money allocated to these projects, an assessment of its sufficiency and on any measures taken to ensure that rehabilitated bonded labourers were not forced back into bondage.

As to the information requested in paragraph 7 of the Committee of Experts' report, it was not enough merely for the Government to supply the data requested. Noting that the Bonded Labour System (Abolition) Act had been in place for over 24 years, it was time for the Government to determine what worked, and what did not work, and to make the necessary changes. This evaluation should include the question of the effectiveness of vigilance committees as well as the new information given by the Government representative on such committees.

The Employer members noted that, despite the measures taken by the Government, child labour remained a substantial problem. They requested the Government to indicate the manner in which it was applying the 1996 Supreme Court decision requiring children to be removed from employment in hazardous industries. The Employer members also asked the Government to supply in full the information requested by the Committee in paragraph 12 of its observation.

With regard to the issue of child prostitution, the Employer members recalled the 1998 discussion before this Committee on the existence of child welfare programmes for the protection and rehabilitation of children. There again, the Government needed to evaluate what was working and what was not and adjust its strategy accordingly. While the Committee recognized the difficult economic and social circumstances in the country, they considered that the Government should nevertheless place a greater priority on resolving the problem of forced labour.

The Worker member of India noted that, despite India's ratification of the Convention 46 years ago and its enactment of relevant legislation almost 25 years ago, the serious problem of forced labour remained. Reliable statistics on the number of bonded labourers were not available, primarily because of the clandestine nature of this type of employment. Employers would not admit to having bonded labourers for fear of penal action, while workers would not complain of the situation for fear of losing their livelihood. With regard to the Government's statement on the number of bonded labourers released and rehabilitated between 1976 and 1999, the Government representative had not clarified the nature of the rehabilitation provided, nor had information been supplied regarding the number of bonded labourers that might have been forced back into bonded labour, including migrating labourers. The Government should undertake to obtain accurate data on this question. A large portion of bonded labourers in India were in rural areas and rural landlords and moneylenders systematically exploited the rural poor, who were forced to borrow money at exorbitant rates of interest. Since these people were landless, they were forced to pledge their children to work. The high interest rates charged made these loans impossible to pay off. The implementation of structural adjustment programmes required by the IMF and the World Bank had increased poverty in the area and, as a result, the bonded labour system continued in rural India, particularly in the absence of genuine land reform and the Government's failure to take steps to stop this exploitation.

He noted that India's vast population was increasing annually. The rehabilitation statistics supplied by the Government representative did not take into account new bonded labourers and new child labourers and he noted that this phenomenon continued to increase with the rise in population. Moreover, the number of persons living below the poverty line (52 per cent according to World Bank estimates) had increased in India over the last decade. Under these circumstances, he considered that official measures taken by the Government did not even begin to address the problem and, in fact, he believed that the Government's policies only added to poverty in rural areas.

The question of bonded labour was closely linked with child labour. India employed the largest number of child labourers in the world. Although the Government had enacted the Child Labour (Prohibition and Regulation) Act, 1986 which prohibited child labour in certain industries, the number of children working in those industries had increased over the past 14 years. Children still worked in agriculture, construction, mines, fisheries, matchbox factories, glass factories, the bidi industry and other sectors. They worked eight to ten hours per day in unhygienic conditions. Despite rehabilitation measures taken by the Government, the number of working children in India was increasing every year. While the ILO might continue to request more information, appreciate information supplied by the Government and request additional details, the problem would not be resolved, as it was closely linked with the need to develop the economy, generate gainful employment, provide proper housing and increase the minimum wage to enable parents to maintain and educate their children. Indeed, with 130 million unemployed out of an economically active population of 340 million, it was likely that the problems in India would continue to worsen.

As the Committee of Experts had noted, pursuant to the Child Labour (Prohibition and Regulation) Act, 1986, the Supreme Court of India had directed employers guilty of using child labour to pay an amount of 20,000 rupees per child in compensation, which sum would be deposited in a special rehabilitation fund. However, the Government had not provided information on any amounts recovered from offending employers to date. Moreover, with regard to the Committee of Experts' comments on the lack of labour inspections in small production units under the Factories Act, 1948, he indicated that child labour and bonded labour existed in large numbers in such units.

In respect of the projects initiated by the Government, he noted that the trade unions had asked the Government to permit the social partners to monitor the progress of these programmes, but that the Government had declined. He indicated his belief that the Government's political will to resolve this problem was absent today. He stressed that there were laws and regulations prohibiting forced labour in India, but what was important was actual practice. Referring to the upcoming global report, he hoped that the Government would prepare a plan of action in cooperation with the social partners in the context of the global report for next year.

The Employer member of India considered that the detailed information supplied by the Government representative had responded in large part to the Committee of Experts' observation. Commenting on the issue of the disparities in the statistics on bonded labour he relied on the statistics given by the Government representative which indicated that 280,340 bonded labourers had been identified and that only 17,000 remained to be rehabilitated. He characterized these as positive statistics. Recalling that India had been the first country to join IPEC in 1992, he asserted that child labour and bonded labour no longer existed in the formal sector. If it did persist, this problem would be found only in the informal sector. In respect of the problem of child labour, he referred to the Government representative's statements regarding programmes initiated in this area and maintained that the Government had actively involved the social partners in these activities. The speaker questioned the authority of the Committee to examine complaints in respect of child labour brought by NGOs, commenting that, in India's case, the complaint had been initiated by only one NGO — Anti-Slavery International — and not by the social partners. The Committee of Experts should not take cognizance of a complaint filed by an NGO in the same manner as a complaint from the social partners, because NGOs had no reciprocal obligations and commitments. Since NGOs were outside the framework of tripartism, they should not have any right to put a sovereign country in the dock.

The Worker member of Japan appreciated the measures taken by the Government to eradicate forced labour in the context of bonded labour, child labour in hazardous conditions and child labour in sex industries. However in his view, this was only the first step in the process. He referred to Articles 23, 24 and 25 of the Convention, which required the Government to issue complete and precise regulations governing the use of forced labour; to take adequate measures to ensure that these regulations were strictly applied; and to provide for the illegal exaction of forced labour to be punishable as a penal offence. He trusted that the Government would continue in its efforts to eradicate forced labour in accordance with these provisions, and therefore requested the Committee to ask the Government to provide additional information on measures taken in this regard. While he acknowledged the Government representative's statement that poverty was a major cause of forced labour, he felt that this problem would not be automatically abolished when economic and social development was achieved. Therefore, a firm commitment to the core labour standards remained necessary. He noted that India had ratified the Convention almost 50 years ago, but that many children remained working in ha-

zardous conditions, including many children in small-scale units or sex industries, as described in the Committee of Experts' observation. Pointing out that ratifying governments should suppress the use of forced labour within the shortest possible time, he expressed his trust in India's strong and sincere commitment to the abolition of forced child labour.

The Worker member of Pakistan recalled that his own country was a neighbour of India and faced many of the same problems. He emphasized that children constituted the future of the country and were essential for its prosperity and social and economic development. It was the responsibility of humankind as a whole to ensure that they enjoyed conditions which were conducive to their future development. However, in developing countries children were born unequal and, in the absence of social security safety nets, destitute families might be forced to send their children out to work. Governments therefore needed to comply with their national and international commitments and ensure that a better future was offered to the many millions of suffering children. He noted that under the terms of the Factories Act, 1948, many small enterprises were not subject to inspection. However, these were precisely the enterprises in which child labour was common. Effective action to combat the problem would require the real involvement of the social partners in all the relevant programmes. In this respect, he pointed out that the policies promoted by the International Monetary Fund and the World Bank did not promote increased prosperity and, indeed, gave rise to more widespread poverty, particularly in view of the downsizing of enterprises. He encouraged the Government of India to examine closely the reasons which made the poor send their children out to work. The State also needed to direct more resources towards education and to build up social security systems to help poor families. While welcoming the fact that Convention No. 182 was being considered for ratification and that IPEC projects were being implemented with the involvement of the social partners, he called upon the Government to review the Factories Act, 1948, with a view to ensuring that the labour inspection system was made more effective. He fully supported the concerns raised by the Committee of Experts that the Government was not in compliance with all the provisions of the Convention. It therefore needed to allocate greater resources to overcoming the problems which had been raised as a contribution to the future development of society.

The Government representative stated that he had listened with great attention to all the points raised during the debate. He would endeavour to respond to a number of them immediately, while submitting more detailed information in writing to the Committee of Experts. He recalled that for effective progress to be made in any field of social action it was necessary for there to be clear guidance in the Constitution, clear legal provisions and the political will to pursue the necessary objectives. It was then necessary for the administration to show integrity and transparency in the implementation of programmes to ensure that they benefited the target groups. In his country, articles 23 and 24 of the Constitution gave a clear mandate to eradicate bonded and child labour. This was reflected in the Bonded Labour System (Abolition) Act, 1976, and the Child Labour (Prohibition and Regulation) Act, 1986. The political will to address these problems was manifested in the programmes of political parties and in the economic measures taken once they came to power. It was also reflected in the plethora of social programmes designed to eradicate poverty, unemployment and underemployment. However, progress was made difficult by the resilience of the inequitable social order, which was a relic of his country's colonial past. It was therefore necessary to examine the reasons why, despite favourable legislation and the political will, such aberrations persisted. In this respect, he recalled the information provided in his earlier statement. One of the reasons why greater progress had not been made in combating bonded labour was that the correct methods of gaining an understanding of the problem had not been adopted. He was fortunate in that he had been mandated by the Supreme Court to look into the problem and, based on a very large number of interviews with bonded labourers, his conclusions had been published under the title *Born in Bondage*. What was required was a consistent effort to disseminate information on the provisions of the law and to carry out training programmes at all levels, particularly for local vigilance committees, which should be given sufficient resources.

He denied that his Government tended to minimize the problem of forced labour. However, he recalled that once the leadership had been given at the federal level, it was then necessary to ensure that action was taken in practice at the levels of the states and territories. It was also necessary to ensure that, when programmes were carried out, their impact was reviewed and corrective action was taken with a view to improving them. In view of the magnitude of the problem and its dependency on the issues of poverty and landlessness, it had not been possible to take effective action against bonded labour at an early stage. He emphasized in this respect that even those workers who were engaged in bonded labour had little idea of how to free themselves from their predicament. Indeed, those who had been freed from bonded labour as a result of government programmes might even relapse into bondage once again. While it was difficult to gain an accurate picture of the numbers of lapsed bonded labourers, he said that an effort would be made to find out.

Finally, he informed the Committee that both Conventions Nos. 138 and 182 were under examination with a view to their ratification. The ratification procedure for Convention No. 182 was nearing completion. With regard to Convention No. 138, he noted that there was no legislation on the minimum age for admission to employment throughout the country. Efforts were now being made to develop such legislation establishing a minimum age of 14 years for admission to employment, and 18 years for arduous work, which would be applicable in the entire country. He hoped that Convention No. 138 would be ratified once satisfactory compliance had been achieved through the proposed legislation.

Another Employer member of India stated that the difficulties experienced in eliminating child and bonded labour were not the result of a lack of political will. Nevertheless, it might be beneficial for the Committee to keep up and even increase the pressure on the Government to take effective action. Even so, it should not be thought that the problems could be eliminated overnight by edict or statute, which would merely tend to make them go underground. He encouraged the Committee to show patience and to give the Government and the social partners in India a chance to address the problem effectively.

The Worker members thanked the Government representative for the information provided. They noted that they had raised a number of questions with a view to helping the Government address the issues raised by the Committee of Experts more effectively. They welcomed the news that the ratification of Conventions Nos. 138 and 182 was under consideration. They continued to urge the Government to take the necessary measures to eradicate the problem of child forced labour and called for more international support, including funding from international agencies. With regard to the issue of the disputed figures concerning bonded labour, they noted that different methods had been used by the Government and the other organizations responsible for carrying out surveys. They therefore agreed with the comments made by the Committee of Experts concerning the vital importance of accurate data and urged the Government to undertake the necessary surveys based on agreed statistical methodologies. They emphasized that the statistics produced were not mere numbers, but concerned human beings, and that it was essential to know how many were involved before effective action could be taken. Finally, with respect to the concerns addressed by the Committee of Experts, they recalled that the Government had ratified the Convention and was required to meet the obligations deriving from it.

The Employer members acknowledged that the Government had devoted a lot of time and resources to addressing the problems of bonded and child labour. They urged it not to adopt a defensive attitude with regard to the appeal that had been made to evaluate the effectiveness of the action which had been taken. This should be regarded as an opportunity to improve the efficiency and effectiveness of the means adopted to combat the problems.

The Committee took note of the extensive information supplied by the Government representative and of the discussion which ensued. It noted with regret that 20 years after the adoption of the Bonded Labour System (Abolition) Act, 1976, bonded labour still existed in the country. This case had been discussed in this Committee eight times over the past 15 years, but insufficient progress towards full compliance with the provisions of the Convention had been achieved. While noting the Government's initiatives to eradicate bonded labour throughout the country, and the difficulty of assembling fully reliable data, the Committee expressed concern about the disparity of statistics over the years and urged the Government to undertake a comprehensive and authoritative survey. The Committee noted the Government's commitment to eliminate child labour, in particular forced child labour, but noted that many children continued to live in bondage and other forms of compulsory child labour. It urged the Government to step up its activities. It called upon the Government to provide legal protection, in particular to children working in the unorganized sectors, i.e. in small-scale units not covered by the Factories Act, 1948. As regards prostitution and sexual exploitation of children, the Committee noted the existence of legislation on the subject, but urged the Government to continue to take practical action to eliminate it, including the development of reliable statistics in this regard. The Committee expressed the firm hope that the next government report to the Committee of Experts would describe in detail the action taken in cooperation with non-governmental organizations, and at national, state and local levels, as well as the progress achieved and the number of prosecutions for violations of existing laws, so that full application of the Convention, in law and in practice, could be not-

ed in the near future. The Committee urged the Government in particular to provide an assessment of the effectiveness of the various measures put into place to combat forced and compulsory labour.

Sudan (ratification: 1957). A Government representative of Sudan stated that he had not believed that this case would be selected to be heard before the Committee. He recalled that the report of the Committee of Experts had contained numerous positive comments on progress in the situation in Sudan, and it indicated his Government's willingness to comply with the recommendations of the report and to provide further information. He also noted that slavery and forced labour were against the cultural values and heritage of his country and illegal under Sudanese law and the Constitution. He further recalled the General Assembly resolution of this year which had made no mention of slavery and acknowledged that abductions occurred in the context of the civil war. He therefore emphasized that the matters raised in the report originated in the armed conflict currently raging in Sudan. Turning to government efforts to combat forced labour and slavery, he recalled the Decree of May 1999 which established the Committee for the Eradication of Abduction of Women and Children (CEAWC). This body had the full powers and mandate to seek the safe return of abducted women and children, investigate reports of abduction, prosecute perpetrators, and develop means to eliminate practices related to forced labour. He noted that the work of the CEAWC had resulted in the resolution of 1,230 cases of abduction and had returned 1,258 abducted persons back to their families. Further fact-finding missions, shelters for victims of abductions, and the establishment of outposts in affected areas were planned in the year 2000. In closing, he recalled that the United Nations Commission on Human Rights had expressed satisfaction last April with the situation in Sudan. He stated that the CEAWC would continue to operate and consult with international organizations in order to address the issues raised in the report. He emphasized, nonetheless, that the clear cause of abductions was the civil war and that the Government was using all means at its disposal to bring this conflict to an end.

The Worker members were deeply concerned by the need to comment yet again on the application of this Convention in Sudan. The case had already been the subject of special paragraphs in 1992, 1993, 1997 and 1998. The comments by the Committee of Experts and the statements of the Government representative gave no sign, despite some meek initiatives, of genuine progress towards the abolition of forced labour and slavery in the country. The Committee of Experts examined allegations of abductions and trafficking of women and children, enslavement, and forcible induction of children into rebel armed forces. According to consistent and reliable sources, such practices were still going on in Sudan. The last communication sent to the Committee of Experts by ICFTU contained detailed information on specific cases of abductions, enslavement, sexual abuse, forced conversions to Islam, and forced labour involving women and children in various parts of southern Sudan.

According to a report drawn up by the UN Special Rapporteur on the situation of human rights in Sudan following a visit to the country in February 1999, Mujahideen militia "... systematically raid villages, torch houses, steal cattle, kill men and capture women and children as war booty. Often, abducted women and children are taken up to the north and remain in the possession of the captors or other persons". What made this case even more serious was mounting evidence of direct government involvement in these activities. The Committee of Experts noted in this regard that the UN Special Rapporteur had also raised the problem of involvement by allies, and even troops, of the Government in forced labour and slavery. The communication before the Committee of Experts referred to testimony and other information on how the Government encouraged abductions by arming militias and how the police failed to act on complaints of alleged abduction. As UNICEF recently pointed out, there was irrefutable proof of various forms of slavery being practised in Sudan. Moreover, all of the facts reported over the past several years by various United Nations agencies and by independent non-governmental organizations pointed to continuing abductions of women and children, the systematic practice of slavery and forced labour, and the complicity of troops and allies of the Government.

It should be observed that the attitude of the Government had evolved since the Committee began examining this case. At first, the Government categorically denied the existence of slavery in the country. In 1998, it requested technical assistance, which was to be confined to the supply of vehicles for use by the investigating body. Having lately set up a Committee for the Eradication of Abduction of Women and Children, the Government appeared to have acknowledged the existence of abduction and forced labour in Sudan. However, it was still unwilling to assimilate these practices to slavery. The Government had committed itself to taking action that would allow the abovementioned Committee to carry out its mandate and compile a detailed registry of cases of abduction. Concrete results were expected by mid-September 1999.

The Worker members wanted the Government to submit a copy of the registry together with information on the specific results obtained (names and numbers of families or women and children captured, numbers of arrests made and penalties imposed). The Government's commitment notwithstanding, the Worker members observed that no action had yet been taken to put an end to abductions leading to slavery. For example, the railway between southern Kordofan and Bahr al-Ghazal, which was a key slave route, remained a favoured supply route of government troops and their allies, and the Government had failed to do away with slavery-related activities along it. Slave-taking militias were still being armed by the Government and its troops were still involved in abductions.

To be sure, the work of the Committee for the Eradication of Abduction of Women and Children was a positive step. But there remained a long way to go. Owing to the authorities' involvement in slavery-related practices, vigorous and immediate action was requested of the Government to put a stop to them. In report after report on the application of this Convention the Government had failed to supply the detailed information requested by the Committee of Experts. That information should cover action taken on the ground to end this scourge, the concrete results obtained as a result of such action, statistical data on the number of persons freed, action undertaken with a view to their return home and rehabilitation, and any penalties which may have been imposed for slave-taking, including penalties imposed among troops of the Government and its militia allies. Lastly, the Government should indicate whether it accepted assistance from the Office and notably the visit of a direct contact mission to conduct an unfettered investigation into forced labour and slavery practices throughout the country, as well as any measures taken to halt them.

The Employer members recalled, in similar terms as the Worker members, that this case had been examined by the Committee several times in the past decade. It had been mentioned in special paragraphs on four occasions and had been mentioned twice as a case of continued failure to implement the Convention. They noted that the nature of the comment in the Committee of Experts' report was basically the same as before. The report did, however, contain some information on certain positive developments. The report by the United Nations Special Rapporteur on the situation of human rights in Sudan in February 1999 was less positive however, and contained information regarding some kind of tacit consent by the Government or the army to the continued capture of prisoners who were reduced to slavery unless or until they were redeemed through ransom. Moreover, slavery and slave-like practices continued with abductions and trafficking of women and children. Children were drafted by force into rebel armed forces where they were forced to transport ammunition and supplies. The resolution adopted in April 1999 by the United Nations Human Rights Commission on this subject retained most of the terms used in previous resolutions.

They noted the first report from the Committee on the Eradication of the Abduction of Women and Children, created in May 1999 by the Government, which had reported on various missions and registered cases: in all 1,230 cases had been registered and 358 children had been released. For this year, 22 missions were planned. It was not sufficient, however, only to produce lists of cases; the work should be focused on practical release actions and the implementation of lasting measures to halt the practices at issue and punish those responsible. The Government had to ensure that its troops and allies no longer engaged in these activities. The CEAWC report was silent as to such measures and did not demonstrate an interest in a real change.

Although the present Committee was well aware of the civil strife in Sudan, the Government was responsible for the situation and events which occurred on its territory and it was responsible for the failure to take appropriate action. It was the Government's task to ensure that law and order prevailed and it had to do more to that effect than it had done until now. While the positive developments noted were welcomed, the continued lack of real change was regrettable. With reference to the Committee of Experts' comments, this Committee should note the positive developments, but also emphasize the need for the Government to take concrete action. They agreed with the proposal by the Worker members to recommend a direct contacts mission which should be competent to examine the situation in all regions and provide a report on the overall situation. This case could then be re-evaluated in the light of such a report.

The Worker member of Sudan noted that this case had been discussed several times in the past. Although progress had been recorded by the Committee of Experts, the serious allegations including practices of slavery had been reiterated. He emphasized that claims of slavery were an insult to the Government and it was a stigma for any nation to accept such practices. The developments and improvements noted must be seen in their proper historical and

cultural context. He recalled the particular geographical and demographic configuration of Sudan and the specific situation caused by the coexistence of numerous tribes with different traditions. While this coexistence had traditionally been relatively balanced, external provocations had caused civil strife to erupt resulting in the taking of prisoners and consequential retaliatory measures. The Government had made great efforts to exert its power over the territory and had succeeded in releasing and returning prisoners, including women and children, to their families. He emphasized that war was the cause of the problems, and that it was necessary to address the causes of the problems, which could only be resolved when peace had been restored. He firmly maintained that Islam condemned the use of force and slavery. He strongly urged the Committee to allow the Government to pursue its efforts to remedy the situation.

The Worker member of Turkey expressed his deep regret to have to discuss a case of serious allegations concerning slavery, servitude, the slave trade and forced labour, and government forces and the militia being directly involved in such acts. He would have liked to believe that these practices belonged to the past. He noted that the Government representative of the Sudan had repudiated all the observations by institutions such as the United Nations, Amnesty International and Anti-Slavery International, but these arguments were not convincing. In the reports of these organizations, the observations were substantiated by the names of the victims, by details of the sale of slaves and of redemptions. In one report it was stated that on 10 March 2000 the Popular Defence Forces had raided the villages of Malith and Rup Deir and enslaved 120 people. On 11 March this year, in various other villages 299 persons had been abducted. The number of chattel slaves was estimated to be more than 100,000 in Sudan and, since 1995, 30,021 slaves had been redeemed. The redemption activities were still ongoing. According to reports, the prices of slaves had varied. In 1997 slaves had been redeemed for US$133 or for ten heads of cattle per slave. In March 2000, when 4,968 black African slaves had been freed in the period from 9 to 19 March, the price was 50,000 Sudanese pounds per slave, the equivalent of US$35 or two goats. The slaves redeemed had testified that they had been abducted by the National Islamic Front, mainly by its Popular Defence Force (PDF). There was ample evidence that there were systematic raids of villages, killing of men and abduction of women and children. He noted that if the Government of Sudan had acknowledged any problems such as those alleged and had requested cooperation and support from the international community and the ILO, it would have received it. However, the categorical repudiation of the facts and evidence reported were not conducive to generate such support. He launched an urgent appeal for an immediate halt to these deplorable practices.

The Worker member of the United Kingdom noted that, while the Sudanese authorities had been willing to take action in response to what they acknowledge to be abductions and forced labour, they continued to deny that the cases concerned had involved enslavement or slavery. He recalled that when women and children have been abducted, whether in the course of civil war or as a result of longer term conflict between different communities, and subsequently forced to work, or forced to marry in the community where they were held captive, their treatment constituted an abuse under the terms of the United Nations Conventions on slavery and under ILO Convention No. 29.

He further referred to reports from Sudan that up to 14,000 persons originating from southern Sudan, currently located in Southern Darfur or Southern Kordofan, needed to be reunited with their families. Many of these persons had been abducted from their homes in Bahr al-Ghazal. The Committee for the Eradication of the Abduction of Women and Children (CEAWC), set up by the Government of Sudan in May 1999, was reported to have secured the release of hundreds of women and children held in forced labour. However, no action had yet been taken by the Government of Sudan to end raids in which unarmed civilians were abducted and taken into slavery or forced labour. Nor had the Government provided the resources necessary to ensure that those who were freed were reunited with their families.

Since May 1999, Western charities visiting areas of southern Sudan controlled by the Sudan Peoples Liberation Army (SPLA) had regularly announced the release of groups of women and children described as "redeemed slaves" — that is to say, people who were held in slavery, and for whom an agent had been paid to secure their release. He declared that he shared the view of Anti-Slavery International that the availability of such money could act as an incentive to agents to abduct others or to present individuals as "slaves" who had in fact not been abducted or held in captivity. The Government should ensure that all people held in slavery be liberated; this should not be left to a process of purchase.

It was not known exactly how many people had been released with the CEAWC's assistance. In May this year, a UNICEF information officer in Sudan had reported that 500 children had been traced over the previous year and that 303 children were back with their families. It was estimated that between 5,000 and 10,000 children had been seized since 1983. However, according to unofficial estimates, some 14,000 people in Darfur and Kordofan might have been "abducted" and needed to be reunited with their families. Most were reported to be Dinka women and children. Hundreds had been reported to have been released from the households where they had been kept, but few were reported to have been returned home. The CEAWC had apparently concluded that a significant number preferred to stay where they were, particularly in the case of women who were now married. Furthermore, the processes for securing releases was reported to be particularly complicated in areas inhabited by Baggara Arabs. Some children, whose release had been secured from the Baggara families, for whom they were working, had subsequently been detained by government officials in the absence of adequate plans to arrange their return home. Furthermore, the plans which had been put into effect had been relatively expensive and the CEAWC had launched appeals for very substantial amounts from donors. The Government of Sudan had not yet demonstrated its own willingness to pay these costs. The CEAWC was also reported to have been unwilling to record details of the identities of the households where abducted women and children had been held. This was apparently because of a concern that householders might not cooperate if they feared future attempts to prosecute them.

While the Government might point to real material obstacles for the reuniting of women and children with their families in Bahr al-Ghazal or elsewhere, it was evident that many of these obstacles could be overcome if the Government of Sudan had the will to do so. Similarly, the Government's failure to order an end to all attacks on civilians in towns such as Aweil and Wao meant that it still appeared to be condoning raids and thus facilitating further abductions.

In conclusion, he implored the Committee to keep in mind the appalling facts recorded in this case, in particular the sufferings caused to enslaved children. There was an urgent need for immediate and substantive action on the part of the Government. The Committee should adopt conclusions in the strongest possible terms. Furthermore, given the weakness of tripartism in Sudan, and the total absence of free trade unions able to make their own independent observations free from government intervention, he urged the Committee to recommend a direct contacts mission so that the Conference Committee and the Committee of Experts would have a better chance of verifying the situation.

The Worker member of Sudan declared that the assertions made by the previous speaker regarding trade unionism in Sudan were totally untrue. He emphasized that the Confederation of Sudanese Workers was a freely established and democratically elected trade union. The Arab Labour Organization as well as the Organization of African Trade Unions had been present during the elections and would endorse this fact.

The Government representative thanked the members of the Committee for their comments on the case. He had hoped that the discussion would be fruitful and constructive and would have taken into account the needs and situation of developing countries. In this respect, he emphasized that the statements which had been made concerning slavery in his country were obsolete. The problem under examination concerned the abduction of women and children. The situation was rendered much more complex by the civil strife in the country, as concluded by the United Nations Human Rights Commission. He noted in this respect that the Human Rights Commission had not even considered a special report on the situation in his country this year, but only a note from the secretariat. It was necessary to welcome the new developments in the country, and in particular the establishment of a commission to eradicate the abduction of women and children. His Government therefore welcomed the conclusions of the Human Rights Commission and continued to cooperate with international agencies, including UNICEF and charity organizations, with a view to raising awareness of the real situation and returning persons who had been abducted to their families as soon as possible. The commission which had been established had been given powers to take measures with a view to resolving the problem, and its procedure had been established by law. It was empowered to search for, arrest and bring to trial persons guilty of abduction. At the present time prosecutions were not taking place because confidence needed to be built. This initiative needed to be given the necessary time in order to gain the trust and confidence of the population. If it were placed under too much pressure, it might not achieve the desired results.

He also referred to various initiatives which had been taken, including the holding of a meeting to discuss issues in Sudan and to provide those concerned with all the necessary information. The Government's commitment to transparency was also demonstrated by the publication of press communiqués issuing the figures for the numbers of persons abducted and for those who had been returned

to their families. With regard to the reference made by one speaker to the railroad linking the north and the south of his country, he emphasized that it was the lifeblood of the Sudanese people and linked those in the south of the country with both the north of Sudan and the rest of the world. He refuted any suggestion that it had been constructed for the practice of slavery and reaffirmed that its purpose had been to facilitate progress and development in south Sudan. In conclusion, he undertook to cooperate with the Conference Committee and the Committee of Experts in providing all the information requested. He emphasized the need to develop suitable machinery to address the problems in cooperation with the international community and in compliance with his national Constitution and beliefs.

Another Government representative, the Minister of Manpower and Development, added that the statements made by the members of the Committee had been extremely dramatic, but had not taken into account the progress that was being made. He emphasized that as many as 70 per cent of the southern Sudanese lived in the north of the country or in areas which were under rebel control. Many of the alarmist reports were concocted by the rebels to place his Government in a bad light. It needed to be taken into account that 30 per cent of the Sudanese army was composed of persons from the south of the country, who would certainly not allow their own kinsmen to be enslaved. He did not deny that excesses were committed in certain conflict-affected areas. Before the outbreak of the war, the Government had taken security measures to ensure that such practices did not occur. However, since 1983, the situation had deteriorated. Citing once again the report of the United Nations Human Rights Commission, he emphasized that his Government stood for openness and transparency and for this reason had welcomed many parliamentary delegations to the country to observe the situation for themselves.

In response to a proposal that the Government should invite a direct contacts mission to come to Sudan he stated that his country welcomed any initiative by the ILO to address the issue. He proposed that discussions should be held with the higher authorities of the ILO with a view to arranging a visit in the future.

The Worker members stated that according to converging and reliable sources, the practices of the abduction and trafficking of women and children still persisted in Sudan. They considered that the argument of the Government, attributing this situation to the civil war, could not be accepted and they completely rejected it. Even if civil war could have an influence on these practices, in no case could it justify slavery or similar practices on the national territory and even less in the areas which were controlled by the Government. The case was even more serious as there seemed to be an active involvement of governmental and allied troops in these practices.

The Worker members welcomed the creation of the Sudanese Committee for the Eradication of Abduction of Women and Children (CEAWC). They noted certain positive initiatives which had already been taken by this Committee, especially the establishment of registries to take a census of the cases of identified abductions and the cases of the return of the victims to their families. However, the CEAWC also had the obligation under its mandate to proceed to the prosecution and arrest of those responsible for these acts. Yet, it seemed that up to now no prosecutions had been undertaken, even though many reports prepared by United Nations bodies and by independent NGOs revealed the involvement of governmental and allied troops.

The Worker members considered that, given the extreme gravity of this case and taking into account the timidity of the initiatives taken by the Government, as well as the lack of precision and clarity in its replies to the Committee of Experts and to the Conference Committee, they wished to make the following proposals to the Committee. First, that a very strong conclusion would be adopted. Second, that the Government be requested to provide all the requested details to the Committee of Experts. Third, taking into consideration that, according to the answer of the Government representative to the Committee, the Government would be ready to accept an ILO direct contacts mission, they hoped that such a mission would be sent to Sudan in order to investigate the practices of slavery and forced labour on Sudanese territory and that it would establish contacts with all those concerned by these problems.

To conclude, the Worker members detected in the last phrase of the Minister of Manpower and Development a positive element demonstrating a willingness for openness and wanted to know if the Government would in fact accept an ILO direct contacts mission.

The Employer members noted that discussion in the Committee had not yielded any new information and had been focused on facts which were basically known to the Committee. They also noted the explanations provided by the Government representative concerning Article 25 of the Convention, which had apparently not been invoked for political reasons. They added that the Government representative had not provided a positive response to the question of whether it would be prepared to receive a direct contacts mission. A direct contacts mission could perhaps bring this case forward, but such a mission depended on cooperation by the Government.

The Committee noted the information supplied by the Government representatives, including information on recent measures to release persons who had been abducted, and the detailed discussion which took place thereafter. The Committee noted that this was a particularly serious and longstanding case affecting fundamental human rights, as witnessed by its inclusion in a special paragraph in 1997 and 1998, and the fact that comments had been received from workers' organizations. The Committee noted the positive measures taken by the Government, including the establishment of the Committee for the Eradication of the Abduction of Women and Children. Nevertheless, it expressed its deep concern at continuing reports of abductions and slavery and urged the Government to pursue its efforts with vigour. It understood that the situation was exacerbated by the continuing civil conflict and noted the measures taken to reach a settlement. The Committee expressed the firm hope that the Government's next report to the Committee of Experts would indicate that measures had been taken, including punishment of those responsible, and that concrete results had been obtained, so that the full application of the Convention, in law and in practice, could be noted in the very near future. The Committee strongly recommended that a direct contacts mission be undertaken by the Office to obtain full factual information and to examine effective assistance to the Government in this respect. The Committee regretted that the Government had not accepted the proposal to invite a direct contacts mission. The Committee decided that its conclusions would be placed in a special paragraph of its report.

The Government representative stated his objection to the use of the word "slavery" in the Committee's conclusions. The last report of the United Nations Special Rapporteur had only used the term "abduction". He also stated that he had not rejected the idea of a direct contacts mission, but had only stated conditions for arranging it.

United Kingdom (ratification: 1931). A Government representative indicated that his Government fully supported Convention No. 29, and took the Committee of Experts' observations very seriously. The issue of work in prisons was discussed at length by the Committee last year when it considered individual cases under Convention No. 29. A key point that emerged at those discussions was the complexity surrounding the interpretation of some aspects of the Convention, drafted in the 1930s, in a contemporary setting, particularly in the context of public and private sector partnerships. Another important point was that the concept of work for prisoners had changed. Whereas it might previously have had a punitive element, work for prisoners in the United Kingdom and other countries was now, like education and training, considered to be a crucial factor in their rehabilitation and re-entry into society. Indeed, under the United Nations Minimum Rules, prisoners were required to work as part of their rehabilitation and preparation for release. In recognition of the complex issues surrounding this debate, a number of delegates who spoke at last year's meeting of the Committee on the Application of Standards felt strongly that a new General Survey on forced labour was needed before the issue could be evaluated and given the full consideration it merited.

His Government had noted the observations made by the Committee of Experts in respect of work performed by prisoners in either prisons or workshops, either of which had been contracted out. His Government understood the Committee of Experts' concerns, but believed that it had in place adequate measures to ensure that prisoners who worked in these situations were not exploited and that they did not engage in forced or compulsory labour. The objectives of the United Kingdom Prison Service were to protect the public by holding those committed by the courts in a safe, decent and healthy environment; and to reduce crime by providing constructive regimes which addressed offending behaviour, improved educational and work skills and promoted law-abiding behaviour in custody and after release. Prisoners were encouraged to acquire work habits, attitudes and skills, together with exposure to modern industrial practice, which would better equip them to return to society as law-abiding citizens. Prison regimes, whether run by the public sector or, in a few cases, contracted out to the private sector, provided similar programmes to address offending behaviour, as well as education, training and employment opportunities for prisoners. The provision of a number of different types of work was intended to enable many prisoners to have, often for the first time, modern work experience prior to their return to society. The value of work programmes offering relevant and realistic training was that they prepared prisoners for employment on release; there were well-established links between unemployment and crime. A study had shown that prisoners who had been involved in work programmes had a lower arrest rate than a matched group who had not. Re-

search had also shown that vocational training courses applied to a targeted group of prisoners could lead to a reduction in reconviction rates.

Finding suitable work for prisoners was difficult. It needed to correspond to individuals with a range of abilities. The growing experience of prison services was that the best way to find suitable work for prisoners was to contract with private companies, and the United Kingdom ensured that suitable safeguards were in place to stop the exploitation of prisoners. These arrangements had practical benefits. They increased the amount and range of work for prisoners and provided a more realistic work experience for prisoners which contributed to a sense of achievement and self-esteem and helped break down barriers against the employment of ex-offenders.

A small number of United Kingdom prisons were managed under contract with private sector companies. These prisons — nine out of a total of 137 — were required to conform to the same policies and to meet the same standards as publicly managed prisons. They were subject to the same regimes of independent inspection. They were required to meet the same standards and conditions of work as those for prisoners in public sector prisons. Prisoners working in either contracted-out prisons or workshops did so under the same conditions as those working in public sector prisons. Contractually managed prisons were obliged to comply with all legal health and safety requirements.

No prisoner — whether in a publicly run, or privatized prison or workshop — was placed at the disposal of private company employers. While private sector companies might supervise the work on a day-to-day basis, the prisoner remained under the ultimate care and control of Prison Service officials. Prisoners received pay for the work they did. Wages were paid to prisoners by the prison and not by the private company providing the work.

The Government considered that its present policies for the employment of prisoners conformed with the requirements of the Convention and were in the best interests of prisoners. His Government believed that the work or service was carried out under the supervision and control of a public authority and that the persons concerned were not hired out or placed at the disposal of private individuals, companies or associations. In his Government's view, there was no alternative to its present policies which would not severely reduce the volume and quality of work available to prisoners, to their direct disadvantage and to the wider detriment of its objectives of rehabilitation. The Government continued to believe that the provision of suitable work opportunities for prisoners, including by private companies under the supervision of the Prison Service, was in line with the general aims and objectives of the Convention and other good practices, such as the European Prison Rules and United Nations Minimum Standards.

In his Government's view, it was clear from last year's discussions before the Conference Committee that the principle of prison labour needed to be given further and wider consideration. The speaker was pleased to note that the Committee of Experts had recognized that this was a very important issue which merited fresh attention. His Government intended to address the matter in its next report in the light of responses to last year's general observations. As the United Kingdom had made clear in the general discussion, it intended to participate fully in those discussions. In the meantime, his Government looked forward to continuing to discuss the issue with its social partners. The United Kingdom would also continue to supply information to the Committee of Experts through its next report on the application of Convention No. 29 and would respond in full to the direct request.

The Employer members noted, with regard to the Committee of Experts' comments concerning the United Kingdom, that the provisions in respect of overseas domestic workers had been amended and that there had been improvement in this area. However, the question of its practical application remained and the Employer members asked the Government to supply information in its next report on the impact of the new legislation. With regard to the issue of prisoners working for private companies, they noted that the Committee of Experts did not see a problem with the Government's practice of having prisoners work on pre-release schemes where the voluntary consent of the person concerned was obtained and there were further guarantees and safeguards covering the essential elements of a labour relationship to remove the employment from the scope of Article 2(c).

Turning to paragraph 4 of the Committee of Experts' comments regarding prisoners in outside employment, the Employer members noted that this situation did not exist when the Convention was adopted in 1930. Therefore, the Committee of Experts may not have had this situation in mind. It might be addressed under Article 2(c) of the Convention, which provided that a person convicted by a court could be required to work under two conditions. First, the work or service must be carried out under the supervision and control of the public authority and, secondly, the prisoner could not be hired to or placed at the disposal of private individuals, companies or associations. If this case was to be addressed under the provision mentioned, these two conditions must be met. In the case before the Committee, the conclusion could be drawn that the Convention was not violated as long as the prisoner remained under the supervision and control of a public authority and was not placed under the complete authority of private companies. They noted, however, that the Committee of Experts' interpretation followed the strict wording of the Convention in this regard. The Employer members then raised the question of the conditions under which prisoners could work and disagreed that prisoners working for private companies should be subject to the same employment conditions prevailing on the free labour market, pointing out that the Convention was silent on this point with regard to outside prison labour. However, it was well established that prisoners were not as productive as other workers and the risk of harm or damage was higher. Because of these conditions, prisons did not receive much work from outside employers and therefore went out to seek out employment for prisoners in private enterprises. The Employer members believed that it was important for prisoners to perform meaningful work which would allow them to be reintegrated into society and help prevent recidivism. Such work helped the prisoner to acquire employment-related skills as well as the opportunity to receive an income. In conclusion, they indicated that a broader approach to this issue should be taken by the Committee. Noting that the Convention was drafted before the issue of private prison labour arose, they asserted that it was necessary to look at the benefit to society as well as to the prisoner. The public authorities must retain supervision and control over the prisoners and determine the conditions under which a prisoner would carry out work for a private company. While the Conference Committee had discussed this issue for some time, the dialogue should be continued and more attention should be paid to this growing practice.

The Worker members noted that greater attention had been devoted by the Committee of Experts and the Conference Committee in recent years to the issue of prisoners working for private companies, and a dramatic increase in the practice had been noted. The Committee of Experts had again commented on Convention No. 29 with regard to the United Kingdom. However, it had also commented on the use of private prison labour in Cameroon. Therefore, there was an emerging jurisprudence on private prison labour which would be strengthened next year when the Committee of Experts would again address the issue of prisoners being "hired to or placed at the disposal of private individuals, companies or associations". Moreover, next year's Global Report would focus on Conventions Nos. 29 and 105, which might provide yet another opportunity to focus on the exploitation of private prison labour. The Worker members welcomed the increased attention being devoted to this growing global practice and considered the Committee of Experts' efforts to clarify the provisions of the Convention as an example of the ability of the supervisory machinery to apply a Convention adopted over 70 years ago to new developments and modern circumstances.

The Worker members recalled that private prison labour was clearly prohibited under Article 2(2)(c) of the Convention. However, in an attempt to accommodate what was increasingly seen as a positive prisoner rehabilitation practice, namely the voluntary acceptance of work outside a prison by prisoners scheduled for release to ease their transition back into society, the Committee of Experts had interpreted the Convention to provide for circumstances under which such pre-release schemes would be consistent with Article 2(2)(c). While the Committee of Experts was regularly accused of over-interpretation, the Worker members felt that a number of governments and the Employer members would like the Committee of Experts to provide even more interpretation to accommodate this growing practice. In this regard, the Committee of Experts had consistently stated that work for private companies could be compatible with Article 2(2)(c) only where prisoners worked in conditions approximating a free employment relationship. This necessarily required the voluntary consent of the prisoner as well as further guarantees and safeguards covering the essential elements of an employment relationship. The Worker members expected the Committee of Experts to reaffirm these basic principles in its General Survey next year. They emphasized the importance of having the Conference Committee review the situation in both developed and developing countries to reinforce one of the ILO's fundamental principles, that the Conventions, particularly the core labour standards, applied equally to all countries that had ratified them. They cautioned that there must never be any question of a double standard in the application of standards for the supervisory machinery to work effectively. Noting that the Committee of Experts had addressed the situation of the United Kingdom for the past three years, the Worker members focused on two areas of concern: domestic workers from abroad and prisoners working for private companies. Regarding the former, they noted the Govern-

ment's comments in the Committee of Experts' report and before the Conference Committee concerning the implementation of new rules adopted in 1998 protecting domestic workers. Noting that overseas domestic workers were especially vulnerable to abuse and exploitation, they requested the Government to continue to provide updated information to the Committee of Experts on the effectiveness of these new rules.

Turning to the issue of prisoners working for private companies, they noted that the Committee of Experts' comments addressed outside employment as well as contracted-out prisons and prison industries. The Committee of Experts' comments indicated that prisoners employed outside prisons were subject to income tax and national insurance contributions from the wages they received. The Government had stated that it was prison service policy that such arrangements did not give an unfair competitive advantage to enterprises employing prisoners and must not treat prisoners less favourably than other workers in comparable employment. Therefore, it should be easy for the Government to include prisoners under the national minimum wage laws as requested by the Committee of Experts. With regard to contracted-out prisons and prison industries, the Committee of Experts was absolutely clear in paragraph 8 of its comments that, even if a prisoner remained under the supervision and control of the public authority, this did not dispense with the requirements of Article 2(2)(c). The prisoner must freely consent to the work and the work must be performed under normal conditions regarding wage levels, social security and other safeguards. The Worker members noted the Government's statement in paragraph 12 of the Committee of Experts' comments that most of the work undertaken in prisons involving external contractors "is labour-intensive and if done externally could not be done economically. In the absence of prisons taking on the work, it is likely that the processes would be automated or taken abroad". This situation was not unique to the United Kingdom. They requested more information on the Government's views that private prison labour was the only way for the country's economy to produce needed goods and services that the market failed to provide and that the exploitation of private prison labour was a way for developed countries to compete with the lower labour costs in developing countries.

In conclusion, the Worker members emphasized that they were not opposed to effective rehabilitation of prisoners, and favoured giving them greater work, education and training opportunities. However, they found it objectionable that, in the United Kingdom and a growing number of countries worldwide, private companies could exploit prison labour by legally employing prisoners at wages far below the minimum wage. Apparently, the motive for such exploitation was not rehabilitation but profit. This practice was in clear violation of the Convention and could not be tolerated. The Committee of Experts had made it clear that the growing practice of prisoners working for private companies could in fact be consistent with the provisions of the Convention. Therefore, the Worker members called for the Government to take all the necessary steps to establish the circumstances which would allow prisoners to work in conditions approximating a free employment relationship, as required by the Convention. Ending the exemption relieving private companies of the obligation to pay the minimum wage to prisoners would be a good beginning. However, on a more fundamental level, the Worker members requested the Government to create a legal framework for the establishment of a direct contractual employment relationship between the company and the prisoner.

The Employer member of the United Kingdom supported two points made by the Government representative. First, the current policies relating to private prisons were in conformity with the Convention. Second, there were no realistic alternatives to the current policies which would not severely reduce the volume and quality of the work available to prisoners. She also supported the continued ability of private companies to contract with public authorities for the management of prisons. However, this did not mean that British employers supported the exploitation of prison workers. They fully supported the aim of this fundamental Convention. It was clear from Article 2(2)(c) of the Convention that, where a prisoner was required to work, the Government needed to show that the work was: (1) carried out under the supervision and control of a public authority; and (2) that the person was not hired to or placed at the disposal of private individuals, companies or associations. There was no violation of the Convention because the public authority vetted work given to prisoners and therefore had ultimate control and supervision over the provision of work under the contract, although the private company had a day-to-day supervisory function. Moreover, the contractual arrangements were not comparable to what would normally be regarded as a hiring arrangement because, if they were comparable, then the private company would be paying the public authority as providers of the prisoners' services. This was clearly not the case, since the roles here were reversed. In addition, prisoners were not at the disposal of private companies because the companies did not have absolute discretion over the type of work that they could request the prisoner to do. Companies could only ask prisoners to perform tasks that they could be required to do in a public prison, such as rehabilitative work and duties within the prison. Private companies running private prisons were therefore simply agents of the public authority and were limited by the rules set by that authority.

If the United Kingdom were in violation simply because there was no direct supervision and control, then the Government was left with only one option — to show that the work done in prisons was not in fact forced or compulsory pursuant to Article 2(1). She pointed out that the Committee of Experts had previously held that private companies could require prisoners to carry out work under the Prison Rules under the terms of their contract with the public authority. It had also found that work done by a prisoner for a private individual — whether under a contracting-out scheme or work for a private enterprise brought into a public prison — could only be considered to be done voluntarily if the relationship with the private company were in conditions approximating free employment. The Committee of Experts had therefore requested that the Government implement legislation requiring private companies to pay the national minimum wage, execute an employment contract with the prisoner and provide other employment-related benefits. She submitted that this was not the only conclusion that could be supported under the provisions of the Convention. She considered that there was no need for a prisoner to have a normal employment relationship with the private company to ensure that the prisoner had given true and genuine consent. Article 2(1) only required the person to have offered himself voluntarily and without threat of a penalty. She pointed out that while there might be many reasons to volunteer, this did not detract from the fact of voluntary consent. The objectives of a voluntary relationship could be achieved by introducing a condition preventing a private company from requiring prisoners to do the work and from imposing a penalty if they did not work. This would remove any work done within private prisons from the definition of forced or compulsory labour. While this would not be a realistic option given the United Nations Minimum Rules, the speaker invited the Committee of Experts to explore alternative approaches if it remained convinced that the United Kingdom was not complying with the Convention. If a contract of employment between the prisoner and the private company were deemed necessary, a range of employment protection legislation would apply. She did not consider this to be appropriate since prisoners were disenfranchised and it was unrealistic to compare their circumstances to those of persons in free society. She hoped that she had identified areas for further discussion before definitive conclusions were reached regarding the issue of contracted-out prisons and welcomed the general discussion on this subject to be held next year following publication of the Global Report.

The Worker member of the United Kingdom first turned to the part of the Committee of Experts' comments regarding domestic workers from abroad, noting that some welcome progress had been made, but that room for improvement remained. He described a meeting between Kalayaan, the organization representing overseas domestic workers, and the Immigration Minister of the Home Office to address problems facing domestic workers previously admitted to the country who had left their original employer due to abuse or exploitation. The Government had made certain arrangements to improve the situation of these workers and the Home Office had conformed to the points agreed upon. However, Kalayaan had recently expressed concern to the Immigration Minister regarding three cases refused because of their submission following the deadline for regularization applications, cases that the Home Office had agreed to consider on their merits. He hoped that those cases as well as the issue of post-deadline submissions were being reconsidered. However, the underlying problem, which still appeared to be unresolved, was that the de facto employment relationship under which the domestic worker was admitted to the United Kingdom was not recognized under British law, so that normal legal employment protections did not attach. He considered that the unequivocal recognition of this relationship would represent a significant step forward.

Turning to the issue of prison labour, he noted that the Worker members had already reacquainted the Committee with the basic issues in the case. He stressed that the requirements of the Convention as set forth in Article 2(2)(c) were as clear in 1930 as they were today. In so far as circumstances relevant to the operation of prisons in ratifying States had changed, he considered that the Committee of Experts had responded correctly and had established clear jurisprudence. He noted that the Worker members had referred to the case of the GCHQ and recalled the persistent refusal of the previous Government of the United Kingdom to accept the authority of the Committee of Experts, or indeed of the Conference Committee. He referred to information supplied by his trade union to the Committee of Experts in connection with this case, which consisted of first-hand research undertaken last summer. The results of the

research were then compared with the Convention's requirements and the Committee of Experts' findings. The research was carried out following a meeting in December 1998, when TUC officials and the General Secretary of the Prison Officers' Association met with the then Prisons Minister to discuss the divergence between law and practice in the United Kingdom and the requirements of the Convention. The Minister had invited them to visit both privately run prisons and state-run prisons to talk to prisoners and prison managers about work for private companies. Last August, the speaker had visited three prisons: a state-run remand prison for young women; a state-run open prison for men; and a contracted-out (privately run) local male prison. He spoke to prisoners in all three prisons and in two of them, including the privately run prison, he spoke to prisoners working for private companies which had contracted work to the prisons. The governor of the open prison supplied valuable information on pre-release schemes and work done inside the prison for private companies. The additional evidence submitted to the Committee of Experts was the result of those visits. He noted that, in light of those reports, the Committee of Experts had repeated its concerns and he hoped that the Government was now quite clear about the divergences between its law and practice and its obligations under the Convention. Unfortunately, the research had found little evidence that current practice met those criteria established by the Committee of Experts regarding conditions approximating to a free employment relationship. During the visits mentioned, he spoke with prisoners working in the prison for private companies from outside and to prisoners in "normal prison work", such as laundry, gardening and kitchen work in the privately run prison. With the two exceptions of the pre-release schemes at the state-run Hewell Grange open prison (which met some criteria required by the Committee of Experts such as minimum wage, social security payments and health and safety training) and of the work performed in state-run prisons (which was in most cases supervised by prison staff), none of the other types of work met any of the criteria. In the other cases, particularly in the privately run prison, the contractual relationship was only between the prison and the outside company; there was no contract between the prisoner and the company. Moreover, the prisoners were under the supervision of employees of the outside company or of the United Kingdom Detention Services (UKDS), the private company which ran the prisons, not of state employees.

The speaker stressed that the issue of whether the prisoner had given genuine and free consent to work should be viewed in light of certain factors. First, while the prisoners he spoke with had expressed a preference to work and none objected to working for an outside company, he noted that rules requiring convicted prisoners to work were in force, including in contracted-out prisons, and a prisoner refusing to work would be put on report. Second, neither the minimum wage nor the rate for the job applied, either in work for outside companies or in normal prison work done for UKDS. No prisoner earned enough to meet the lower earnings level for social security contributions. Given these circumstances, he believed that this case was essentially about preventing exploitation of prisoners by private companies. He gave the example of work involving the refurbishment of small concrete mixers for plant-hire companies. The prison concerned had contracted to supply this service to the company concerned. The work was supervised by UKDS custody officers, an instructor and an employee of the plant-hire company. The management told the speaker that the prisoners were being paid a maximum of £25 for a 35-hour week, while prisoners told him that they received a maximum of £15 per week. He pointed out that the minimum wage in the United Kingdom last year was £126 for a 35-hour week. Accordingly, these prisoners were receiving between 20 and 12 per cent of the legal minimum wage in force outside prisons. The management of the privately run prison had indicated that this work could not be done anywhere else on the free labour market in the United Kingdom because to pay even the legal minimum wage would render the operation unprofitable. In this context, the speaker stressed that, certainly, none of the members of the Committee would accept the arguments of those exploiting child labour that it was proper to pay children starvation wages because otherwise they would have no work, nor would they agree that employers should break the law and fail to pay legal minimum wages to adults. He noted that some processes might indeed be unprofitable if normal wages were paid and explained that these processes were generally referred to as "uneconomic". However, in this case, the work — although he acknowledged that the prisoners derived some satisfaction from it — was unequivocally exploitative. If work could not be performed for proper wages, then perhaps it had no place in the economy.

Turning to the publicly run open prison, he noted that a variety of work was performed in pre-release schemes, while a very small number of prisoners were working inside the prison for private outside companies. In some cases, despite the good intentions of the prison governor, prisoners engaged in a concrete and concrete-mixing training course were working for an outside private company that had a contract with the prison and were receiving £8-10 for a 35-hour working week — only 8 per cent of the minimum wage. While none of these prisoners had expressed the view that they were the victims of undue coercion, he believed that there was no genuine free consent in their situation and that they were clearly victims of exploitation. With regard to "normal prison work" being performed inside the privately run prison, he noted that this was work done for and under the supervision of a private company. He recalled that this was why the Committee of Experts had held that the ban on work by prisoners for private companies should apply, a fortiori, to all work performed in private prisons and pointed out that convicted prisoners in the United Kingdom could in fact be required to work whether in a state-run or privately run prison.

In conclusion, he believed that constructive and "decent" work was an essential element in the rehabilitation of prisoners. At Hewell Grange, pre-release schemes were in fact approximating the requirements of the Committee of Experts and he considered such schemes useful to facilitate the reintegration of prisoners into society and the labour market. However, he stressed that, when prisoners were paying their debt to society, society should be represented by the State, not by the shareholders of private companies. However humane the treatment of working prisoners, they would be potential and often actual victims of exploitation as long as the criteria established by the Committee of Experts were not applied. The speaker agreed with the other Worker members that the obligations arising from ratification of the Convention were the same for the United Kingdom as for any other ratifying State. While he acknowledged that the situation in the United Kingdom did not involve physical mistreatment of prisoners by private companies such as beatings or torture and that some of the work in fact contributed to the prisoners' sense of self-esteem, he nevertheless reminded the Conference Committee that convicted prisoners in the United Kingdom did not have a choice as to whether or not they would work and that, in addition, the requirements of the Committee of Experts were not being met. Weakening the jurisprudence to permit the exploitation of prisoners by private companies could have truly devastating effects in countries where the rule of law was not universally and adequately enforced. He stressed that international law was a seamless tissue and that, if one picked at the stitches, it would fall apart. In this regard, he thanked the Committee of Experts for maintaining its stance that the obligations arising out of ratifying Convention No. 29 were the same for all ratifying States. He requested that the Conference Committee make clear to the United Kingdom its obligations under the Convention. Stressing his belief that the problems were not insurmountable but required political will, he welcomed the prospect of future discussions and hoped that the Government would uphold its obligations and demonstrate its commitment to the rule of international law, particularly in regard to fundamental human rights.

The Government member of Australia made it clear that Australia strongly supported Convention No. 29 as one of the ILO's core standards. He recalled that Australia had been called before the Committee last year with regard to a matter similar to the one for which the United Kingdom Government found itself before the Committee this year. At that time, the Australian Government had made substantive submissions on the matter, which could be found in the record of the 87th Session of the Conference. The thrust of those submissions was that it was clear from the preparatory reports from 1929 that the situation of the private administration of prisons had not been considered by the Conference in 1929. Rather, the focus of the Convention was the farming out of prisoners to private employers. The Australian Government had also noted at that time that although Convention No. 29 was a self-contained instrument, it was applied against the background of developing international law. He stated that in the supervision of compliance with the Convention, attention should be paid to other human rights instruments dealing with the same issues in the interest of cohesive international jurisprudence. In this regard, he drew the Committee's attention to recent international instruments, including Article 8 of the International Covenant on Civil and Political Rights and the United Nations Minimum Rules for the Treatment of Prisoners. He further recalled that in its conclusions on the Australian case, the Committee had encouraged all governments to reply to the Committee of Experts' general observations on the question of private prison labour. He stated that it was clear that the application of Convention No. 29 was uncertain in modern times, and that Australia was currently reviewing this issue. In this respect, he supported the view expressed by the Government representative raising questions as to the appropriateness of discussing this issue at the Committee at this point in time. This case also had more important and pressing implications for the Committee and for the ILO in general. First, it illustrated the need to ensure that international labour standards and their supervision remained appropriate for a modern economy. He stated that it should not be surprising that the way prison labour was

addressed in 1929 was no longer appropriate today. Secondly, it highlighted the need for a process to review and upgrade any shortcomings in the standards system which were identified in such a manner. The existing process might not be sufficiently expeditious in the consideration of such issues as they were identified. Thirdly, this case raised questions about the appropriateness of the current supervisory machinery, including the practice of publishing country-specific observations when the Committee of Experts itself had expressed uncertainty and intended to examine the matter in a general discussion. He stated that the Australian Government had maintained the view for some time that there was a pressing need to reform the standards system of the ILO, and that this case reinforced that position.

The Worker member of Singapore recalled that according to the report of the Committee of Experts, persons leased under the Prison Rules, 1999, were exempted from the Minimum Wage Act, 1998. In relation to this, the Government representative had stated that its prison policy was to ensure that such arrangements would not give an unfair competitive advantage to those who employed prisoners and that prisoners would not be treated less favourably than other workers in comparable employment. Nevertheless, there was nothing in the report to indicate how this prison service policy was put into practice, and whether in fact prisoners were paid comparable wages and treated fairly. Furthermore, she noted that such prisoners were not free agents with the ability to look for any employment in the labour market. Given the above, it was difficult to understand how such prisoners could be considered to be employed within a free labour relationship. Turning to the question of consent, she recalled that in its comments on the Cameroon case with regard to Convention No. 29, the Committee of Experts had noted that an important element for compliance with Article 2(2)(c) of the Convention was formal consent by persons concerned. She asked whether consent had been secured in the United Kingdom or whether no such consent was required in this particular case. If so, she asked why there was an apparent discrepancy between the conclusions regarding these two cases. In her view, the employment of prisoners under the Prisoner Rules, 1999, was in contravention of Convention No. 29, and she recalled that the objective of the Convention was to prevent the exaction of labour of any person under compulsion. Finally, she noted that there was an important difference between providing skills and training to prisoners and providing cheap labour to industries.

The Government member of Germany noted that prison labour was a particularly sensitive topic in relation to forced labour. On one hand, prisoners were as a rule obliged to work in almost all countries and thus required special protection against exploitation. In this respect, he recalled Article XX(e) of the General Agreement on Tariffs and Trade which provided for trade measures against prison-made goods. On the other hand, he noted that it was recognized in most countries that work was perhaps the most important factor in ensuring the successful reintegration of prisoners into society. Such work could not simply be repetitive and routine work, as was usually found in prisons, but rather work which corresponded to the capabilities of prisoners and to the conditions of the real world of work. Increasingly, such work was found with private employers. He noted that one could not speak of full equality in the relationship between prisoners and other workers since the employer could not choose the individual workers but rather had to accept the entire contingency of prison workers from a particular institution. The question of whether prison labour, as it had developed over many years, still fitted in the discussion of Convention No. 29 had caused the Committee of Experts to request, in its general comments on the Convention last year, governments to respond to a number of questions on the issue. He recalled that the comments of the Committee of Experts on this matter were expected to be discussed at the International Labour Conference in 2001. In this respect, he indicated his understanding for the concerns of the Government representative about examining the particular case of the United Kingdom before the general discussion on this topic. Perhaps it was more appropriate not to draft conclusions on this case and to await the next report of the Committee of Experts, so as not to pre-empt their findings.

The Worker member of the Republic of Korea expressed his support for the comments made by the Worker member of the United Kingdom regarding the universality of international labour standards. He stressed that Convention No. 29 was a fundamental Convention and that there should be no restrictive or flexible interpretation of the standard to take into account the degree of industrial development of a particular country. He called on the Government of the United Kingdom to respect its obligations under the Convention.

The Government member of New Zealand stated that her Government fully supported Convention No. 29. However, she recalled that there would be a wider consideration of this issue in the context of the Global Report next year. She therefore doubted that a long discussion on prison labour with regard to the particular situation in the United Kingdom would be beneficial. She also noted that the Convention had been drafted in the 1930s, a time when private prisons had not existed. As a result the debate on the interpretation of the Convention in the context of the modern world was complex, as had been demonstrated in discussions on the matter in the Committee in recent years. She stated that in view of the uncertainty on how to interpret Article 2(2)(c) with respect to prison labour, further discussion was needed, and she indicated that the Government of New Zealand looked forward to participating in such a discussion following the presentation of the Global Report at the Conference next year.

The Government representative apologized for not mentioning domestic workers in his initial statement. He recalled that new rules had been introduced which allowed domestic workers to make an application to change employer or to apply to regularize their stay in the United Kingdom in cases of abuse or exploitation. Following a meeting between Kalayaan — the organization representing such workers — and the Government, special casework procedures had been introduced to clear the backlog of outstanding applications relating to the new rules. A significant number of cases had been cleared. He also pointed out that Kalayaan and other relevant organizations had been given direct contact to the Government department responsible for domestic worker issues. With regard to prison labour, he expressed his Government's intention to provide full information for the next report and to discuss the case with the social partners. However, he stressed that the issue of private prison labour went beyond the specific case of the United Kingdom and that it should first be discussed in a general context.

The Worker members expressed strong concerns with regard to suggestions made that the Committee's examination of this case should be suspended until the matter had been discussed in the general report or until the publication of the Global Report. They emphasized that the Declaration on Fundamental Principles and Rights at Work and its Follow-up was not a substitute for the regular supervisory machinery of the ILO. The discussion of the Committee should focus on the United Kingdom and encourage the Government to bring its law and practice into conformity with the Convention.

The Employer members, in reaction to a statement by the Worker members that the Employers' position appeared to be calling for an interpretation of a Convention, recalled that their position had always been strictly against the interpretation of Conventions beyond their wording. In this regard, they recalled that the issue of private prisons had not been known and had therefore not been relevant when the Convention had been adopted in 1930. Consequently, the subordination of this matter under the provisions of the Convention was only possible by interpreting Article 2(2)(c) beyond its strict wording. The Employers' position was simply that labour in private prisons could not be discussed in the context of the Convention without engaging in an interpretation of the instrument. Turning to the issue of payment of wages for work performed by prisoners for private companies, they noted that different terms, such as "payment of normal wages", "payment of the appropriate rate for the job" and "minimum payment" had been used in the comments of the Committee of Experts. They recalled that traditional prison work had always been paid at a low rate. Moreover, the Convention contained no provisions in this regard. According to their understanding, the Committee of Experts was of the opinion that payment should be higher than the minimum wage, but lower than wages in the labour market. They further noted that this view was reflected in "comments" of the Committee of Experts, which were not identical to jurisprudence. The Employer members also reiterated their position that employment contracts should be between prisons and enterprises, and not individual prison workers and enterprises. They noted that only in an employment relationship between a prison and an enterprise would the state supervision of the prisoner be guaranteed; this would not be possible in a private employment contract. The relinquishing of a prisoner from his or her legal status under criminal law into a normal employment situation for a few hours a day would be legally difficult. Furthermore, they expressed their agreement with the statement made by the Government member of Germany to the effect that giving prisoners the opportunity to perform meaningful work was an important element in the successful reintegration of prisoners into society. They agreed that there were important differences between normal and prison labour and that each needed to be treated differently with regard to their respective legal consequences. Finally, they recalled that the Committee had a mandate to draw its own conclusions, which might vary considerably from the views of the Committee of Experts. In this respect, the different views which had been expressed on the issue during the discussion should be reflected in the Committee's conclusions.

The Committee noted the information provided by the Government representative, as well as the discussion that ensued in the

Committee. It also noted that a detailed report had been submitted for examination by the Committee of Experts. The Committee asked the Government to provide further information on the Committee of Experts' observation concerning domestic workers from abroad. As concerned prisoners working for private companies, the Committee took note of the different points of view expressed within the Committee. The Committee hoped that the Government would continue to examine whether prisoners released on a daily basis to work in the free labour market should be covered by normal minimum wage legislation. As regarded prisons and prison industries "contracted out" to a private company, the Committee noted that the Committee of Experts would be examining this issue in detail at its next session. It hoped that the Government would continue to examine measures in law and in practice to ensure that, when prisoners were required to work, this would be carried out in conformity with the Convention.

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

Mauritania (ratification: 1963). A Government representative of Mauritania declared that his country had undertaken a series of legislative reforms, including the adoption of framework legislation regarding civil servants in 1993. This legislation required the adoption of regulations. The regulations respecting civil servants should be adopted this year. As civil servants, labour inspectors would be covered by these regulations. Furthermore, he noted that the draft regulations elaborated in 1985 with ILO assistance on the status of labour inspectors were no longer up to date. In this context, he requested assistance from the ILO with a view to modernizing the 1985 draft. He also referred to a project to redynamize the labour administration, for which he also requested technical assistance from the ILO with a view to bringing it up to date and implementing it.

The Employer members thanked the Government representative for his brief statement on this serious case of failure to observe the Convention. Even though the Conference Committee had not examined the case since 1986, the Committee of Experts had continued to raise the issues. The Employer members regretted to note that the draft regulations respecting the conditions of employment of labour inspectors which had been drawn up with ILO assistance over 30 years ago had still not been implemented and that the last report submitted by the Government in September 1998 had been identical to the one submitted the previous year. This meant in practice that no new report had been supplied which constituted an obvious failure to reply to the comments of the Committee of Experts. The Employer members emphasized that the provisions respecting labour inspection were fundamental to the whole of the ILO's supervisory system. Only through the information provided by labour inspectorates was it possible for governments to know the actual situation with regard to the application of labour legislation in practice. It was evident that the Government had to submit the annual reports of the labour inspectorate as a basis for the assessment by the Committee of Experts of the application of the Convention. The absence of such reports in the case of Mauritania was indicative of the absence of a functioning labour inspection system. The Convention was therefore clearly not being observed. Indeed, it was only possible to apply the specific provisions of the Convention if adequate numbers of properly trained staff were available and employed on a permanent basis, as provided for by the Convention. In practice, there would appear to be hardly any labour inspection system at all in the country. If the Government required technical assistance, this would be unlikely to concern the provisions of the Convention, which were not in themselves difficult to understand. In fact, it was more likely that for financial reasons the Government had found it difficult to set up a labour inspection system. However, it was not the role of the ILO to recruit, train and pay labour inspectors. The Employer members re-emphasized that, through its ratification of the Convention in 1963, the Government of Mauritania had undertaken to establish and maintain a labour inspection system, but that there were serious shortcomings in its implementation of this commitment. Perhaps the Conference Committee should have examined the question at an earlier date. The Employer members called upon the Government representative to provide details of the type of labour inspection system which existed in the country, including its staffing levels, the regularity of inspection visits, the date on which the last annual report on the activities of the inspection services had been issued and the regularity with which such reports were published. In other words, more detail was required on the everyday practice of labour inspection in the country, and indeed on the question of whether it actually existed at all in practice.

The Worker members recalled that, even though this case had not been discussed by the Conference Committee for a number of years, the Committee of Experts had made observations in its reports on five occasions in the course of the 1990s. They emphasized the fact that Convention No. 81 was considered to be a "priority" Convention due to its importance for the standard-setting system of the ILO, as well as for national law and practice. Labour inspection was in fact essential to control the application in practice of labour regulations. In order to ensure that labour inspection was carried out in an appropriate manner, Article 6 of the Convention provided that labour inspectors had to enjoy a status and conditions of service such as to assure them of stability of employment and make them independent of changes of government and of improper external influence. When it had been found that this provision was not applied in Mauritania, draft regulations had been drawn up more than 30 years ago with ILO assistance to bring the law into conformity with the Convention. The Worker members deplored the fact that, since then, the Government had provided no information regarding the concrete measures taken to give effect to these intentions. They requested the Government to clarify which measures it envisaged taking to bring the law and practice into full conformity with the Convention.

As regards the annual reports on the work of the inspection services, the Worker members recalled that the Convention provided that such reports had to be published and submitted to the ILO. However, the Government had submitted no such reports to the ILO since 1987. They therefore urged the Government to indicate the measures it intended to take to implement these provisions of the Convention.

The Worker member of Singapore explained that the Convention imposed the obligation upon ratifying countries to maintain a system of labour inspection for the purpose of ensuring compliance with laws adopted on critical aspects of workers' welfare, such as safety and health, hours of work, wages and the employment of children and young persons. The Convention was therefore an important instrument in ensuring that laws respecting substantive aspects of employment did not remain a dead letter. A critical component of labour inspection systems was the need for impartial, independent and fearless labour inspectors who could make fair and effective evaluations of the workplaces which they inspected. Article 6 of the Convention emphasized the importance of labour inspectors enjoying stability of employment, unaffected by any change of government and free from external influences. It was therefore to be deeply regretted that Mauritania took this obligation lightly. It had failed to take adequate steps to implement an employment system for labour inspectors which would enable them to carry out their tasks effectively. While the Government had received assistance from the ILO to bring the Labour Code up to date and to develop regulations respecting labour inspectors, legislation was not sufficient in itself. What was now required was the political will to put the law into practice. She also expressed great concern at the repeated failure of the Government to provide annual inspection reports to the ILO since 1987. It could not be over-emphasized that such reports were critical to the enforcement and supervision of the Convention. The Government's repeated failure to supply reports gave grounds for inferring that it was not complying with the Convention.

The Government representative stated that, if there had been no labour inspection services in his country, his Government would not have ratified the Convention. Although he had no detailed statistics at hand, he still insisted on the fact that labour inspection existed in his country, as evidenced by the eight inspection services spread over the territory. These different services were coordinated by a central service. All the inspection services were composed of civil servants who were trained in labour law. He further reiterated his previous comments that regulations on civil servants implementing the framework legislation of 1993 would be adopted this year. He also renewed the request for assistance from the ILO to update the draft regulations on the labour inspectors drawn up in 1985. Furthermore, he indicated that the revitalization of the labour administration, launched in 1993, had not been pursued due to lack of financing. Finally, he expressed his surprise to learn that certain reports had not reached the ILO and he undertook to ensure in future that all the reports requested reached the ILO.

The Employer members thanked the Government representative for the brief supplementary information which he had added to his initial statement. The Committee now knew that there were eight inspection sections in Mauritania. However, it had been given no indication of how many inspectors there were, their conditions of employment, and particularly whether they were permanent employees, or the regularity with which enterprises were inspected. The Government representative had stated that the draft regulations respecting the conditions of employment of labour inspectors, which had been drawn up some years ago with ILO assistance, were no longer up to date and had not been adopted for that reason. However, this left open the question of the legal basis on which the inspection services were operating. The Employer members recalled that only two reports had been received from the Government by the Committee of Experts in recent years, and that they

had been identical. Moreover, since 1987 and despite numerous requests, the Government had not supplied any annual inspection reports to the ILO. The Government must therefore be requested to comply with its obligations under the Convention. It was clear that the real problem consisted of the provision of financing for the inspection service. The Committee was therefore bound to request the Government to supply a detailed report addressing all the issues raised by the Committee of Experts and providing precise information on the situation as regards labour inspection in the country.

The Worker members noted that the debate had been short. This had not been because the situation was not serious, but because the violations of the Convention were evident. They took note of the statement by the Government representative according to which changes in the regulations concerning the status of civil servants were due to be adopted this year. They emphasized that this legislation should enter into force as soon as possible in order to bring the law and practice into conformity with the requirements of the Convention. Finally, they once again urged the Government to supply annual reports on the labour inspection services in order to permit verification of the proper functioning of these services.

The Committee noted the information supplied by the Government representative and the discussion which took place. It noted that for more than 30 years, and despite repeated requests from the Committee of Experts, the Government had failed to take the necessary action in keeping with Article 6 of the Convention to adopt regulations that offered labour inspectors stability of employment and independence as regards changes of government and improper external influences. The Committee also observed that, contrary to the requirements of Articles 20 and 21 of the Convention, no annual inspection reports had been communicated to the ILO since 1987. The Committee also noted that, according to information supplied by the Government, a 1993 study of the human and financial resource needs for labour administration had been sent to the Office with a view to receiving technical assistance to be financed by international donors. It noted that the Government's request for ILO assistance had been renewed. It therefore requested the Government to take the necessary measures to ensure the adoption of regulations concerning labour inspectors in line with Article 6 of the Convention. The Committee expressed the hope that the Office would help the Government secure adequate financial backing for the project to revitalize labour administration. The Committee urged the Government to report in detail to the Committee of Experts in 2000 on the progress made in law and practice in applying this priority Convention, which was critical for the protection of workers.

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

Cameroon (ratification: 1960). A Government representative, Minister of Labour, Employment and Social Protection, stated that the process of revising all the texts had been under way since 1990, and significant advances had been made with regard to civil liberties, democracy and human rights. It was in this framework that the 1968 Act and section 6 of the Labour Code were in the process of being modified.

With regard to texts in the social domain, the Labour Code of 1992 provided for tripartite committees (the National Consultative Labour Committee and the National Committee on Occupational Health and Safety) to take note of and validate texts prior to their submission to the Government and their transmission to the National Assembly. As the composition of the committees was tripartite and as acute problems had been encountered concerning the representativeness of the workers' organizations, it had not been possible to set up these committees. These committees had not therefore been convoked, although significant means had been provided in the state budget. What was primordial for Cameroon was not the modification of a law which itself was henceforth null and void, but the reality. This reality had been brought to the attention of the ILO and this Committee. On the other hand, the normal functioning of unions in the public service had been established. The unions operated without interference from the Government regarding their constitution, calling strikes and carrying out these strikes. This was the case of the strikes which had recently taken place in secondary and higher education. The Government had been careful to negotiate with the unions, which on this occasion obtained the release of more than CFA2 billion of arrears for payment of the correction of examinations. At this level, the Government thought its practice was in compliance with the objectives of the ILO. The reality of collective bargaining was demonstrated by a document dated 24 May 2000, which he submitted to the Committee.

The real situation was always more important than fantasies. The Government denounced the incessant harassment to which it was subject coming from those whose aim was to present a distorted picture of the truth. If it was through ignorance of this reality, the Government strongly suggested sending a mission of inquiry on site to verify the normal functioning of unions in the public service and the reality of the process of reformulating legislative and regulatory texts in the field. Failing such an on-site mission, it would be difficult for the Government to provide other information to prove that the objectives of the ILO were respected in practice.

The Worker members recalled that this was an old case which had not shown signs of any meaningful progress. This was mainly due to the Government's repeated refusal to cooperate with the Committee and its failure to react to the comments of the Committee of Experts and the Committee on Freedom of Association. This case was not complicated; the only obstacle was the Government's reluctance to address the relevant issues. They recalled that Act No. 68/LF/19 and Decree No. 69/DF/7 were in contravention of Articles 2 and 3 of the Convention. Moreover, certain sections of the Labour Code made persons forming a trade union that had not yet been registered liable to prosecution. While this provision mainly applied to civil servants and persons working in the public sector, they recalled that the public sector was a significant employer in Cameroon.

Responding to the Government's claim that the discrepancies between legislation and the requirements of the Convention were small, and that the practice was all that mattered, they recalled that the Convention required conformity in both law and practice. Moreover, there was no indication that the Convention was respected in practice at all. Persons leading unregistered trade unions continued to be suspended, intimidated, and harassed. In the private sector, there continued to be frequent interference in the main trade unions, the CCTU and the CSTC, and the Government continued to be active in fomenting dissent and establishing rival trade unions in order to weaken the trade union movement. There were also allegations of deregistration of unions and interference in May Day celebrations, and it was recalled that Cameroon had refused to include the CSTC in the Ninth African Regional Meeting in 1999. Finally, since the last International Labour Conference in June 1999, the Cameroonian Parliament had met three times, yet no amendment to the legislation in question had ever been submitted.

Since this case showed no progress and appeared to be deadlocked, the Worker members noted that it would be logical for the Committee simply to repeat its conclusion from last year. However, in the hope of finding a breakthrough in the case, they proposed to the Government that it firmly commit itself to submitting to Parliament, before the session of the Committee of Experts this year, draft legislation amending Act No. 68/LF/19, Decree No. 69/DF/7, and certain sections of the Labour Code, so that such proposed legislation could also be examined by the Committee of Experts and the Conference Committee next year. Since the Government did not reject the comments of the Committee of Experts, but simply claimed that it would rectify the situation in the near future, it should avail itself of assistance offered by the ILO, the MDT in Yaoundé, and the social partners. If the Government was prepared to do this, then the conclusions from last year could be repeated. If not, the case should be included in a special paragraph to the report to the Conference.

The Employer members pointed out that this was a very old case with which the members of the Committee were all familiar and noted that they did not intend to depart much from the proposal made by the Worker members. The Committee had discussed this case twice in the 1980s and four times in the 1990s, including last year, but no progress had been achieved. The Government representative had supplied the same facts to the Committee as those reflected in the report of the Committee of Experts, namely, that the legislation in question was being revised and new legislation would be enacted. Accordingly, the Government representatives' statements today were merely a repeat of previous years. The national legislation still provided that public sector unions could only be registered with prior approval from the Minister for Territorial Administration and that any infraction was subject to prosecution. They agreed with the Worker members that the law must be amended to bring it into conformity with the Convention. With regard to the requirements of prior approval for affiliation to an international organization, the Employer members noted the Government's statements that the legislation in question was being revised. However, the Government had made the same statements in 1984 and in 1992. This was therefore an extreme case of delay which the Employer members considered unacceptable. They considered it necessary to express the Committee's regret at the lack of progress in this case and agreed with the proposal of the Worker members.

The Worker member of Cameroon said that there was effective freedom of association in his country, since there were two central trade union organizations, occupational federations in the various sectors and national trade unions affiliated to confederations and independent trade unions. Semi-public enterprises were organized

in occupational trade unions affiliated to confederations. Section 6(2) of the Labour Code which had been incorporated into the Labour Code in 1992 was not applied in practice. Workers formed trade unions by filing their applications with the trade union registry of the Ministry of Employment, Labour and Social Protection. In the meantime, their unions engaged in all manner of activities including, on occasion, strike action. Nevertheless, under the proposals to revise the Labour Code, all the workers' organizations concurred that it was necessary to remove a clause which appeared to be hiding something and was not in conformity with Convention No. 87. The discord in one central trade union organization should not affect the whole of the trade union movement in the country. He explained the current situation with regard to workers in the public sector. Public employees and contractual workers covered by the Labour Code were organized in trade unions and registered with the trade union registry. Their unions enjoyed the same freedoms as all other trade unions in the private sector. Public servants were currently organized in the Central Public Sector Trade Union Organization (CSP), although it was not clear how this Organization would operate; it might not, for example, enjoy the same prerogatives as central trade unions in the private sector if Act No. 68/LF/19, of 18 November 1968, and Act No. 68/LF/7, of 19 November 1968, were not repealed. The Committee should request the Ministry of Employment, Labour and Social Protection to do its utmost within the Government to ensure that these two Acts were repealed in order to strengthen freedom of association for public servants in keeping with the provisions of Conventions Nos. 87 and 98.

The Worker member of Senegal recalled that the application of Convention No. 87 by Cameroon was a case which was frequently examined by the Conference Committee. The deliberate attempts by the Government to find refuge in the flexibility of a process of the constant modification of legislative texts was not acceptable, since the Committee had been calling for the repeal of the implementing Decree of Act No. 68/LF/7 of 1968. It was evident, despite the Government's posturing, that the issue of freedom of association was not measurable by the yardstick of the mere existence of several trade unions. Otherwise, how was it possible to understand the existence of this evil provision which established that the promoters of a trade union which had not yet been registered, but who acted as if the trade union had been registered were liable to legal action? He considered that this was a very peculiar way of respecting freedom of association. If prior authorization for affiliation to an international organization did not constitute a restriction on freedom of association, what would qualify as a restriction? The information at his disposal demonstrated that the Cameroonian authorities did not, in practice, comply with the obligations deriving from the ratification of Convention No. 87. What was important was not the commitments of governments, which did not last longer than the Conference session, but the adoption of measures, in practice, such as the inclusion of this country in a special paragraph. In most African countries, there was a very real desire to subjugate trade unions, and the so-called prior authorization for the registration of a trade union was a provision which violated their freedom. The existence of a minister responsible for supervising public liberties also demonstrated the will of the public authorities to restrain them. The effective and integral application of Convention No. 87 still represented a conquest to be achieved for Cameroon, as well as his own country. The ratification by Cameroon of Convention No. 87 dated from 1960, which was already 40 years ago. In conclusion, he subscribed to the comments of the Committee of Experts and statement by the Worker members, and especially his proposal to include Cameroon in a special paragraph.

The Worker member of France noted that in view of the importance of this case, the Committee had decided to place it in a special paragraph last year and to urge the Government to take effective measures to eliminate the restrictions on freedom of association and to submit a detailed report on the application of the Convention. The Government had also been requested to set a provisional timetable for the revision of the legislation at issue. No progress had been noted, however. In the context of the discussion of the automatic cases, the Government representative of Cameroon had referred to "reasonable delays". The question remained of what "reasonable delays" constituted in his view. The repeal of the 1968 Act and of section 6(2) of the Labour Code, which was required to ensure the proper application of the Convention, did not require any significant administrative, legislative or regulatory work. However, no bill had been submitted to the Parliament of Cameroon. The repeal of the Decree of 6 January 1969, which was required for the application of Article 5 of the Convention, would be even easier and more rapid.

The obstacles and difficulties of achieving progress in the democratization process were focused on the right to organize of teachers or, in other words, of those who were entrusted with the task of making children into free citizens with a critical sense. Since 1991, the Government had refused to recognize the National Trade Union for Higher Education (SYNES). The absence of any union activity in the export processing zones should also be noted. Furthermore, several acts of interference by the Government in the internal affairs of the Cameroon Workers' Trade Union Confederation (CSTC) were the object of a complaint filed with the Committee on Freedom of Association in March 2000. Note should also be taken of the recent intervention by the Minister of Labour to dismiss the President of the CSTC from his post in a private enterprise for having called a legal strike. Finally, the May Day demonstration of 2000 had been prohibited by the militarization of the area designated for the holding of the meeting, thereby preventing trade union leaders from having access to it and leading to the wounding by gunshot of three workers.

In conclusion, the lack even of apparent goodwill by the Government was unacceptable and to its discredit. The lack of progress is all the more worrying as it was contributing to a deterioration in the situation. In its conclusions, the Committee should set clear time limits for the Government to ensure that national law and practice was brought into conformity with the Convention.

The Government representative strongly objected to the statements of some speakers, among them the Worker member of France. He dismissed as allegations the information according to which trade union activists had been wounded by gunshot following the militarization of an area where the May Day holiday had been celebrated this year, and he demanded the names and other details of the alleged victims. He stated that the area had never been militarized. As to the allegation that he had demanded the dismissal of a trade union official, he also demanded copies of the documentary evidence of the allegation. Such was the accumulation of untruths for which there was not a shred of evidence that he considered it urgent for the Committee of Experts to visit the country so that it could make up its own mind, not on the basis of information spread outside the country, but on the actual situation there. Such a mission would make it possible at long last to put an end to the serious and intolerable stains upon his country's honour. Returning to the problem of prior authorization, he observed that the Cameroon Workers' Trade Union Confederation (CSTC) had developed two heads. However, two executives could not run one and the same confederation, even in Cameroon. This "two-headedness" was not a government jibe, it was merely related to the depths to which the trade union had sunk. The Government was waiting for an office to be set up to be able to register the organization. This did not prevent it in the meantime from working with organizations affiliated to the Confederation and, in proof of its good faith, it informed the Committee that two Cameroonian Worker members were attending its sitting. One was a member of the Union of Cameroon Trade Unions (USC) and the other belonged to the Cameroon Workers' Trade Union Confederation (CSTC). Contrary to the statements made with distressing flippancy by certain speakers, the Worker member of the CSTC had not been appointed by the Government. Instead of congratulating the Government on its objectivity and neutrality, it had been the object of recriminations, unfounded allegations and, in short, harassment. He repeated that, although the challenged Decree had not yet been amended, there had been progress in practice and the fact that the Government had entered into negotiations with the CSTC, which it was said not to have recognized, bore this out. As to the pace of government action, he emphasized that it was not within the competence of the unions and that neither they nor the ILO could run the country in the Government's stead. Nor could the Government set the pace for Parliament. Some speakers had referred to "a reasonable delay". He rejoined that in his country a reasonable delay would be whatever the Government set itself. The Government had no wish to chop up the 1968 Act or the 1992 Labour Code to make some people happy at a time when it was engaged in the global reform of the country's labour legislation. The Government had political will and the changes suggested by the Committee of Experts would be taken into account when the time was ripe. Lastly, he raised the question of the real representativeness of the individual who was passing himself off as the President of the CSTC.

The Worker members explained that the aim of their proposal was to get some movement from the Government, given the lack of progress in the case. In response to the Government representative's statements, the Worker members indicated that the national legislation was simply not in compliance and needed to be amended immediately. The Worker members considered that the Government had not demonstrated any political will to resolve the problems before the Committee. If their proposal of a timetable were rejected, the Worker members cautioned that they would have no choice but to request that the Committee repeat its conclusions of last year in a special paragraph, with the additional conclusion that the Committee regretted the Government's delay in this case.

The Employer members, in response to the Government representative's statements, considered that the Committee was faced with the same situation as in previous years and indicated that the

same conclusions from last year would need to be repeated again this year in a special paragraph.

The Government representative declared that it was useless to focus on the need to change a word or a section in a decree. It was more appropriate to concentrate on reality. Hence the need to send an investigatory mission to Cameroon which would make it possible to establish the facts and to verify the truth of the allegations. While dialogue with the supervisory bodies was necessary, their interference was unacceptable. The proposal to set up an investigatory mission, which would allow the Committee of Experts to go to Cameroon, should be taken into consideration in the conclusions of the Committee.

The Worker members, responding to the comments of the Government representative inviting the ILO to come to Cameroon, thought that this invitation was interesting. They hoped the mission would take place quickly and permit an objective investigation into the facts so that the Committee could examine the relevant law and practice in this case.

The Committee took note of the oral statement made by the Government representative and the discussion that followed. The Committee recalled that this case had been discussed on numerous occasions over the last two decades. The Committee recalled with great concern that for many years the Committee of Experts had been formulating comments on the discrepancies between national legislation and the requirements of the Convention. In particular, it stressed the need to delete the imposition of previous authorizations for the constitution of trade unions of public servants and for joining foreign occupational organizations. It also urged the Government to repeal provisions allowing for the prosecution of persons forming trade unions not yet registered who would behave as if they were registered. The present Committee also noted that several complaints had been examined by the Committee on Freedom of Association concerning interference by the public authority in union matters and anti-union reprisals. The Committee deeply regretted once again that no progress had been achieved in the application of the Convention. It strongly urged the Government once again to remove without delay the obstacles to full freedom of association contained in its law. In this respect, it firmly asked the Government to submit draft bills to Parliament and to the ILO before the next session of the Committee of Experts. The Committee recalled that technical assistance from the ILO with the help of the multidisciplinary team present in Yaoundé was at the Government's disposal. It welcomed the invitation of the Minister to send a mission on the spot in Cameroon. The Committee expressed the firm hope that the next report due this year would describe measures actually taken to ensure full compliance in law with this Convention. The Committee decided that these conclusions would appear in a special paragraph of its report.

The Government representative had noted the conclusions adopted by the Committee and had wondered about the respective weight of certain expressions such as " to take note" or "appear in its report". He demanded that excuses be presented to the Government if the defamatory allegations made by certain speakers, in particular those concerning the injured trade unionists and a request for the dismissal of a trade unionist, could not be proven. Finally, he reiterated the wish of his Government for a delegation of experts to come to Cameroon to observe the real situation prior to requiring a time limit for bringing the legislation into conformity with the provisions of the Convention.

The Worker member of Cameroon stated that he had been shocked by certain points in the discussion, especially by the intervention of the Worker member of France, who had demonstrated his total ignorance of the trade union situation in Cameroon. The allegations concerning the prohibition of the demonstration on 1 May 2000 and the events that had taken place were completely false. While this Committee was empowered to interrogate the Government on the non-application of a ratified Convention, any extrapolation which might lead people to create a false impression of the real situation was unacceptable.

Colombia (ratification: 1976). A Government representative stated that the Government was attending the Committee with a view to providing all the information that was considered necessary in relation to Convention No. 87. The Government had shown the will to maintain a permanent dialogue which was broad, transparent and sincere with employers, workers and the ILO, as well as to provide the necessary information to the Committee concerning the progress which had been made.

The Congress of the Republic had approved Bill No. 184, submitted by the Government, which amended, repealed and introduced significant changes in the legislation to bring it into conformity with Conventions Nos. 87 and 98. He emphasized that the scope of the right of association had been extended and that greater autonomy had been accorded to trade union organizations, with the elimination of the statutory restrictions on the membership and registration of trade unions and the empowerment of the civil authorities ("alcaldes") to register them. Furthermore, the simple notification of changes in their by-laws would be sufficient for their recognition. These measures would ensure compliance with Articles 2, 3, 4 and 5 of the Convention. Collective action was allowed in the event of the retention of wages, and sanctions had been eliminated, such as the prohibition on the right of freedom of association of leaders who caused the dissolution of a trade union. The conditions of nationality and the exercise of a specific occupation in order to be a trade union, federation or confederation officer had also been abolished. Federations and confederations would be strengthened by facilitating the payment of contributions by trade unions. The protected status of trade union leaders was extended to public servants and the issue of leave for trade union activities was regulated. Moreover, the procedure for demonstrating the status of trade union leaders had been simplified.

The above legislation constituted significant progress and included modern institutions for its application, as recognized by the ILO. The legislation made it possible for parties to collective bargaining to be workers in the branch, industry or economic activity. It also gave trade unions the option to request or refuse the presence of the Ministry of Labour and Social Security at meetings where, following direct bargaining, the decision was taken to refer the dispute to an arbitration tribunal or to call a strike, and its participation was restricted to monitoring votes. Now only workers who were on strike could decide to end the strike and submit outstanding disputes, if they considered it appropriate, to an arbitration tribunal without the intervention of the labour authorities. The legislation also took into account the observations of the Committee of Experts concerning the powers of inspection of the labour administration authorities, by eliminating the powers of officials to initiate inspections and controls, leaving it to the request of the trade union and/or second- and third-level organizations.

With regard to some of the comments made by the Committee of Experts concerning the exercise of the right to strike, he noted in the first place that the Government had prepared draft legislation defining the essential public services. The subject had been included on the agenda of the Permanent Committee for Concertation on Wage and Labour Policies, which was a tripartite body. Once the study had been completed and a definitive text agreed with the social partners (employers, workers and the Government), it would be submitted for approval to the Congress of the Republic. He informed the Committee that the preliminary draft had been examined by the ILO experts during the direct contacts mission and had taken in their principal recommendations. This preliminary draft also established an alternative procedure for the determination of legal and illegal strikes, assigning the competence in this respect to the labour courts.

The Government of Colombia had fully demonstrated its commitment to promoting the independent exercise of the right of association by workers' organizations through the submission to the Congress of the Republic of draft legislation lifting the current restrictions. It should be emphasized that the above legislation was the outcome of agreement between the social partners, thereby demonstrating their common commitment to the development of a new culture of labour relations based on social dialogue and concerted action. The complete text of the legislation respecting freedom of association had been provided to the ILO by the Government with the request that it should be made available to the members of the Committee. The Government representative expressed her gratitude to the ILO for the unrestricted support which it had provided in the process of reforming the legislation.

The Worker members recalled that this case had been discussed repeatedly over the past decade and that the conclusions of the Committee had been taken up in a special paragraph on two occasions. Direct contacts missions had taken place in Colombia in 1996 and in February of this year. Numerous complaints of violations of freedom of association had been filed and new complaints regarding anti-union discrimination and violations of the right to collective bargaining had been filed recently by several trade unions. During the 86th Session of the Conference, a complaint under article 26 of the ILO Constitution had been filed.

In addition, the Worker members recalled that the Committee of Experts had raised in the past three major questions. The first concerned the requirements for the creation of a trade union and in particular the clauses establishing requirements of Colombian nationality, professional experience, and a clean police record. The second question related to the provisions respecting compulsory arbitration and the restrictions on the right to strike. Finally, the third question concerned the climate of violence and impunity that reigned in the country. They had taken note of a draft Bill introduced by the Government with the intention of abrogating a series of legislative provisions which were not in conformity with the Convention. However, they observed that the Committee of Experts had concluded that many provisions still created problems, espe-

cially those relating to the supervision of the internal management of trade unions and trade union meetings. Another provision which continued to pose problems with regard to the Convention concerned the powers accorded to the officials of the Ministry of Labour to call before them trade union leaders or members to require them to provide information on their work, and to present their books, registers, plans and other documents. The Worker members observed that since the Government's promise to submit the Bill, there had been no follow-up. In fact, instead of progress, it seemed that the situation had deteriorated after the adoption on 30 December 1999 of Act No. 550, which represented a direct infringement on freedom of association and the right to collective bargaining.

In addition, the Worker members noted the observations of the Committee of Experts according to which some provisions relating to the exercise of the right to strike, which had been the subject of comments for many years, had not been taken into account in the amendments proposed in the Bill. The provisions concerned, among other matters, the prohibition of strikes in several public services and the possibility of dismissing trade union officers who had participated in a strike. Regarding the exercise of the right to strike in practice, they referred to the conclusions of the Committee on Freedom of Association in Case No. 1916 according to which the concept of essential services had to be interpreted in the strict sense of the term. In this respect, the Worker members supported the views of the Committee of Experts and once again called upon the Government to take the necessary measures for the amendment of this provision.

The Worker members expressed their deep concern regarding the situation of violence which prevailed in the country against workers and trade union members. Devastating accounts had been provided by national, regional and international workers' organizations in relation to the anti-union violence. They raised questions about the actual respect of freedom of association in the country. Since June 1998, at least 125 trade unionists had been assassinated, and since November 1999 the number already amounted to 39 trade unionists assassinated. According to information from various international trade union confederations, of the 123 trade union members who had been murdered in the world in 1998, a total of 98 were Colombian. Moreover, of the 1,336 trade union members who had been assassinated in Colombia between 1991 and 1999, no fewer than 226 were trade union leaders. This continuous violence which mainly affected trade union members in the country was quite simply intolerable, since they were targeted in their capacity as trade union members and workers. In fact, their commitment and public activities made them systematic targets, as proven by many testimonies. The impunity of the assassins was total and the impotence of the Government was intolerable, particularly since, when ratifying Convention No. 87, it had undertaken to ensure the minimum conditions for its effective application. The Worker members once again emphasized the necessary interaction between ILO instruments and the principles set out in its Constitution in order to create a climate of social peace. Finally, they urged the Government to bring its law and practice into conformity with the principles of freedom of association in the broad sense. This necessarily involved the creation of a political and legal climate and the adoption of concrete provisions which put an end to impunity and anti-union terror. They therefore proposed that the Committee's conclusions should be included in a special paragraph.

The Employer members recalled that the Committee had examined the case of the application of the Convention by Colombia frequently. The observation by the Committee of Experts contained a list of discrepancies with the provisions of the Convention which were of differing significance. In the view of the Employer members, those points relating to the right to strike did not give rise to any violation of the Convention, since the issue of the right to strike was not in their opinion governed by Convention No. 87. However, many of the other points raised concerned clear violations of freedom of association. They noted that, with ILO assistance, some amendments had been drafted and that the resulting Bill had been approved in its first reading in the Congress in July 1999. The question clearly arose as to the number of readings required before the Bill would finally be passed into law. The draft amendments resolved 11 problems enumerated by the Committee of Experts with regard to the application of the Convention. In this respect, the progress achieved should be recognized, since the legislation in question had given the authorities broad powers to interfere in the internal affairs of trade unions.

The Employer members recalled that the Committee of Experts nevertheless continued to criticize the proposed amendment to section 486 of the Labour Code on the grounds that it empowered the State to exercise control over the internal management of trade unions. They noted the statement by the Government representative that courts of arbitration had been established in the country. However, information was required on whether the courts could carry out arbitration procedures independently without the interference of the State. The Employer members agreed with the assessment by the Worker members that the whole process had taken place in an extremely violent climate. They emphasized that while this background information was important for the overall understanding of the case, the Government was still obliged to give effect to the provisions of the Convention in national legislation. Even a situation which was similar to civil war should not be used as an excuse for failing to meet these requirements. In conclusion, they called on the Government to provide information on the number of readings required for the adoption of the draft amendments and on the time which would be required to complete the legislative process. However, many restrictions on freedom of association still remained in the country. In this respect, the draft amendments to many of the existing provisions which were in violation of the Convention constituted a first step in the right direction.

The Worker member of Colombia indicated that once again, the workers in general and Colombians in particular were witnessing the lamentable spectacle of a Government attempting to deflect the attention of the international community with reports and excuses which did not reflect the true situation in Colombia in respect of Convention No. 87, freedom of association and respect for human rights. The Government made great use of a huge capacity to confuse the members of the Committee with matters such as Bill No. 184, which had been approved last week but had not yet received assent. While the legal aspects concerning Convention No. 87 were a cause for concern, as had been very precisely expressed by the Workers' spokesperson, the truth was that the workers were concerned by many issues which today affected all Colombian workers and people. The Government was aware of the existence of a Bill on labour flexibility which, if approved, would give rise to discussions in this Committee for many years to come. The same was true of the Social Security Bill, as well as the negative impact of Act No. 550 of 30 December 1999, which in itself constituted a serious threat to workers, collective bargaining and freedom of association. To this should be added deep concern for the resurgence of the status of non-unionization or "profit plans" which were practices intended to hinder the trade union movement, violating the provisions of Convention No. 87.

Various circumstances made it necessary to discuss this case. Thirty-nine trade unionists had been assassinated since the beginning of this year, almost 2 million people had been displaced by violence, there was an unemployment rate of 22 per cent, the informal economy had reached 56 per cent, there were rural workers without land and indigenous people affected because of badly named "development", and, in general, a situation of democratic instability reigned. These facts encouraged the Workers to look to the international level in the hope of finding initiatives which would soon contribute to a change in the situation. It was necessary to stress that while the Government spoke of a draft bill to determine essential public services, the workers' organizations had not been consulted in this respect. The Ministry of Labour had shown complacency with regard to the dismissal of thousands of workers, particularly in the public sector; at district level, for example, over 40,000 workers had been dismissed in the last 14 months. The Ministry of Labour had also authorized dismissals of workers in the private sector, for example in the Tennis Club of Cúcuta. It was not possible to speak of freedom of association when in the current year workers were denied freedom of association through the prohibition of the right to collective bargaining in the entire public sector and the freezing of salaries by decree. Finally, he pointed out that the Colombian people were dependent upon the decisions of the ILO and that it was appropriate to include this case in a special paragraph so that the Government would not yet again forget the promises it had made to this Organization.

Another Worker member of Colombia, refuting the Government's statement that questions concerning violent acts against trade union leaders and trade unionists should not be discussed in this body, referred to the resolution concerning trade union rights and their relation to civil liberties adopted by the Conference in June 1970 and emphasized that the concept of trade union rights lost all meaning when civil liberties were not respected and the right to life was not guaranteed. The theme of violence against the trade union movement had to be mentioned, as well as the difficulties in forming trade unions in Colombia. On many occasions, trade unions had to be formed clandestinely so that workers would not be dismissed by their employer or by public entities. In this respect, he referred to a quote from a Colombian guerrilla who had stated that it was easier to organize an insurgent group than to form a trade union in Colombia. He wondered in these circumstances how the Colombian authorities could refuse to discuss the question of assassinations and violent acts against trade union leaders and members. He indicated that, while the law to bring some legislative provisions into conformity with the freedom of association Conventions had just been approved in Colombia, the problem was one of the non-application of numerous existing laws. For example, he pointed out

that Conventions Nos. 87 and 98 had been ratified by Colombia in 1976, yet year after year their application continued to be discussed. He stressed that the ILO should continue to follow what was happening in Colombia in respect of the violation of these Conventions. There was great respect in Colombia for the ILO and great expectations on the part of workers for what the ILO could accomplish in defending their interests. In this respect, he called for a special paragraph so that the Government would react and in this way could indicate next year that it had complied with the recommendations of the Committee on Freedom of Association and the comments of the Committee of Experts.

The Worker member from the United States considered that the physical integrity of Columbian unionists could be seriously affected by a proposed 1.6 billion dollars aid package destined to the security forces for the prosecution of the internal conflict against drug traffickers and the guerrillas. Tragically, Colombian unionists were being purposely targeted by all armed parties in the conflict. In February of this year, the AFL-CIO had adopted a resolution and joined the Colombian labour movement in calling for the respect of core labour rights as necessary preconditions to the passage of the United States aid package to Colombia. He recalled that the Committee of Experts had pointed out that the new amendments to the Labour Code allowed the Ministry of Labour to conduct inquests and investigations of trade union activities, even when there was no reasonable suspicion of criminal offence on the part of the trade unions. He mentioned that one question of non-compliance had not been mentioned by the Committee of Experts. This question was the fact that neither the Collective Bargaining Law No. 50 nor the current Labour Code effectively permitted the establishment of collective bargaining representatives and mechanisms per national sector and industry, thus limiting trade union and collective bargaining representation to the local and enterprise level. He emphasized that physical violence against Colombian unionists and the issue of impunity remained totally unresolved and appeared to be worsening. In this regard, he criticized the Government for arguing that this issue was irrelevant to Convention No. 87 and recalled that the Government had specifically objected to an ILO commission of inquiry by asserting that the assassination of unionists was not systematic, but the result of the endemic violence in the society. To that argument, he replied that Article 8 of Convention No. 87 stated that the laws of a country should not impair the exercise of the rights contained in the Convention. He questioned whether that could be a greater hinderance to the exercise of the rights contained in Convention No. 87 than a justice system which failed to effectively stop, deter and remedy violence purposely directed against workers or employers. Furthermore, he recalled that the human and labour rights resolution adopted during the ILO Conference in 1970, drew the nexus between core labour rights and the right to physical security and protection from arbitrary detention. Over 2,000 Colombian unionists had been murdered in the last ten years. The Human and Labour Rights Programme of the Escuela Nacional Sindical of Colombia had found that the vast majority of trade union assassinations in 1999 had taken place during periods of collective bargaining and collective worker action. Finally, he insisted that since this case had been before this Committee on so many occasions and without substantial improvement, this Committee should do nothing less than cite it in a special paragraph.

The Worker member of Costa Rica recalled that the Colombian case had been discussed in the Committee for many years. The very clear link between the legal situation and the barbarous acts committed daily against trade unionists could not be denied. There was a situation of generalized aggression towards workers, which was demonstrated by labour legislation which hindered collective bargaining in the public sector, which permitted interference by the administrative authorities in trade union affairs, as well as in the dismissals of workers for strikes declared illegal because this right was denied to workers, and in the impunity in cases of assassinations, kidnapping and imprisonment of trade union leaders and members. This situation obliged the Committee to place this case in a special paragraph, since it concerned the violation of human rights in the broadest sense of the term. He maintained that, if the Committee wanted to cooperate for an improvement in the situation in Colombia, its conclusion could not simply consist of offering ILO technical assistance, but rather of condemnation by the international community.

The Worker member of Guatemala asserted that the Colombian case and the systematic violation of Convention No. 87 had been dealt with by this Committee over the last 15 years at least. He supported the statement by the Worker members and insisted that the situation which Colombia was experiencing was dramatic. The Commissioner of Human Rights of his central trade union systematically requested the Colombian Government to respect and ensure respect for freedom of association and the right to organize. He indicated that, despite the observations of the Committee of Experts, the situation of trade unionists continued to get worse, particularly as a result of the assassinations committed by the dark forces and interests in the country. Trade unionists and civil societies of the world could not be indifferent to the situation of the Colombian trade union movement. He added that it was urgent to know the measures which the Government had taken and intended to take to put an end to the trade union slaughter. Finally, he supported the inclusion of this case in a special paragraph.

The Worker member of Uruguay recalled that Colombia had ratified Convention No. 87 in 1976 and that 20 years later the Committee was receiving the Minister of Labour, who was convincing it that Colombia was going to amend its legislation, which unfortunately had not happened. Today, neither the Minister nor the Deputy Minister were present to try to discuss and seek solutions to the situation of violence and pain which is being experienced by Colombian workers, provoked by the numerous murders and the lack of protection under which they had to carry out their activities. He maintained that it was the Government's responsibility to protect trade union action. The present Government and earlier governments had not complied with and were not complying with Convention No. 87 and there was also evidence of a will to continue violating the Convention in such areas as the right to strike. The Committee of Experts had referred to comments by a trade union organization concerning the non-deduction of trade union subscriptions. This proved that, in addition to seriously violating the Convention through death threats and assassinations of trade unionists, the Convention was also violated in matters of less importance. Finally, he asked for this case to be mentioned in a special paragraph and expressed his confidence that next year the Government would present genuine and concrete solutions.

The Government member of Norway, speaking on behalf of the Governments of Denmark, Finland, Iceland, Norway, Sweden and the Netherlands, welcomed the efforts undertaken to support the peace process. However, he noted with great concern that several provisions still did not comply with the requirements of Convention No. 87, even though this case had been raised repeatedly over the years in the observations of the Committee of Experts and in the Conference Committee. With reference to the right to strike, he noted the conclusions of the Committee on Freedom of Association in Case No. 1916, which had been approved by the Governing Body at its March 1999 session, and strongly emphasized that a declaration of illegality regarding a strike should be made by a judicial or an independent authority, not by the Government. He also noted that the Governing Body would decide whether or not to establish a commission of inquiry at its session in June 2000. Finally, he urged the Government to take measures to bring the provisions in question into full conformity with the principles of freedom of association and expressed hope that the Government of Colombia would be able to report positive developments next year so that everybody could be ensured of the effective application of the Convention.

The Worker member of Cuba emphasized the repeated violations which had occurred in Colombia for many years now and which had been addressed in this and other meetings. He expressed his great concern at the grave situation endured by Colombian trade unionists and his profound solidarity with them. Persecuted Colombian trade unionists were to be found in all the countries of Latin America. He firmly insisted on the fact that the subject of the deaths of trade unionists could not be ignored, whether or not it was technically linked to the discussion of the observation of the Committee of Experts. He expressed the hope that the situation of violence and the legislative problems could be resolved rapidly and stressed that the peace process was a matter of urgency.

The Employer member of Colombia, commenting on the previous statements by the Worker members, stated that it also bothered the employers to have to come before bodies like the present Committee. He expressed the employers' permanent condolences for the death of Colombian compatriots, including trade unionists. The employers were respectful of the law and carried out their business activities within it. He emphasized the enormous efforts made by the Government in the peace process and the national accord. He stated that the Bill referred to by the Committee of Experts overcame the large majority of questions raised and added that it had already been discussed and approved by Congress (Senate and House), and was presently being considered by the President of the Republic for his assent, in accordance with the procedures in force. He stressed that, during the negotiation of the Bill in the Senate and the House, many points had been agreed upon with the workers' and the employers' representatives. No agreement had been reached only in respect of section 486 of the Labour Code and, with the agreement of the employers and workers, the ILO had been requested to provide a final opinion, which had been reflected in the text of the Bill. He indicated that the Committee on Negotiation of Labour Policies and Wages was discussing two subjects: occupational training and the definition of essential public services in which strikes could be prohibited. This demonstrated the employ-

ers' will to support initiatives for improved coexistence and harmony in the country.

The Government representative referred to the difficult situation which Colombia had experienced for over 40 years due to the internal armed conflict and stressed that in the last two years it had been possible to bring the parties in the conflict to the negotiation table. One of the parties would be coming to discuss a ceasefire on 3 July 2000, which would help to change the problem of violence. He emphasized the great progress which had been made in bringing the national legislation into conformity with ILO Conventions, in particular Convention No. 87. In this respect, he mentioned Act No. 50 of 1990, which had introduced very important amendments and innovations; the 1991 Constitution which consecrated the rights of association, strike and collective bargaining and which established that ratified Conventions were part of national legislation; Act No. 278 of 1996 which created the tripartite Negotiation Committee; and Bill No. 184, approved by Congress at the end of May, which was before the President of the Republic for signature and which included the points raised by the Committee of Experts. He said that a document indicating clearly the changes made in the sense requested by the Committee of Experts had been submitted to the Conference Committee. In February 2000, the direct contacts mission had taken note of the draft bills prepared by the Minister of Labour on essential public services where strikes could be prohibited and disputes submitted to compulsory arbitration by one party, and on the right to collective bargaining of public employees which permitted them respectfully to present their demands to the authorities. The mission had made proposals for the modification of these draft bills which included summary recourse to the judicial authorities against decisions taken by the administrative authority declaring a strike illegal, the inclusion of the expression "collective bargaining of public employees" in one of the draft bills, the right to strike of federations and confederations and the replacement of compulsory arbitration after 60 days of strike action with compulsory arbitration agreed to by both parties. The draft bills and the modifications proposed by the mission were being examined, taking into account in particular that some matters had economic repercussions. Subsequently, the bills would be submitted to the social partners in accordance with existing legal mechanisms. Article 29 of the Constitution guaranteed due process including in the administrative procedures. Finally, he informed the Committee that the Minister of Labour could not come this week, but that the President of the Republic had already established, within the framework of the peace process, negotiations on pensions, employment and taxes, where certain issues raised by earlier speakers would also be discussed. These negotiations would include employers, workers, the Church and civil society.

The Worker member of Colombia, commenting on the motives behind the absence of the Colombian Minister of Labour in this Committee and the reasons expressed by the Government representatives for this, indicated that it should be explained that negotiations were under way which, in principle, the workers had decided to attend in order to discuss specific subjects, but that the absence of the Minister was due in reality to the fact that the Government was experiencing a serious political crisis.

Another Government representative stated that a special paragraph was not justified, especially since the current Government had achieved important progress which had not been possible at earlier times. In particular, the Act approved by Congress and the other bills covered all of the points raised by the Committee of Experts. The progress achieved had been the result of work carried out jointly by the Government with the ILO through machinery and negotiation. Furthermore, the current Government was committed to the peace process. As concerned the questions posed by some speakers on the climate of violence, he stated that the Government was not avoiding the debate but rather that this debate would take place shortly, in the corresponding body, with the Minister of Labour present.

The Worker members, after having heard the various speakers, observed that no progress had been made in relation to the observations of the experts. The accounts which had been heard confirmed that in Colombia the worker members of trade unions were exposed to violence due to the exercise itself of the commitment which they had undertaken in favour of workers in their quality as trade union members. They repeated their deep concern confronted with a situation which lasted since almost 20 years and which, due to its gravity, figured on a quasi-permanent basis in the agenda of the Conference Committee or the Committee on Freedom of Association. They asked one more time that the conclusions would be included in a special paragraph. The Worker members regretted not having been able to share their evaluation of the situation with the Employer members during the discussion. They firmly insisted one more time on the gravity of the situation in that country and deplored the fact that the Colombian workers had paid with their lives in too many cases.

The Employer members agreed that it was necessary to take into account the overall situation in the country. They recalled that for many years the Committee of Experts had been drawing attention to many provisions in the national legislation which violated the Convention. Now many of these points were being resolved by means of the draft legislation which had already gone through Parliament, but which still needed to receive presidential assent. Nevertheless, the Committee of Experts still considered that one of the proposed amendments contravened the provisions of the Convention. With regard to the comments by the Committee of Experts relating to the exercise of the right to strike, the Employer members reiterated their view that this matter could not be addressed within the context of Convention No. 87. The Employer members noted that all speakers had emphasized the importance of the civil disturbances and conflicts in the country. Nevertheless, these should not be used as an excuse for the maintenance of provisions which were in violation of the Convention. The situation in the country was indeed very serious and affected all the parties concerned. But the problem was of a political nature and could not be addressed solely through the Convention. The draft amendments contained very significant changes which the Committee of Experts had been requesting for many years. It was nevertheless the duty of the Government to examine any points which were still pending and to provide a detailed report to the Committee of Experts on the concrete measures taken and the adoption of the draft legislation.

The Committee took note of the oral information supplied by the Government representatives and of the discussion which ensued. The Committee noted with great concern that the long-standing and major discrepancies between law and practice and the provisions of the Convention had resulted in several complaints before the Committee on Freedom of Association and a formal complaint presented by a number of Workers' delegates at the International Labour Conference in June 1998 under article 26 of the ILO Constitution concerning the non-application of Convention No. 87. The Conference Committee had discussed the application of Convention No. 87 on many occasions without being able to note progress in the implementation of the Convention. The Committee recalled, once again, that the Committee of Experts insisted that the Government should remove all the obstacles that hinder the right of workers to form and join trade unions of their own choosing, to elect their representatives in full freedom and the right of workers' organizations to organize their activities without interference from the public authorities which restrict or impede their lawful exercise. The Committee noted the information supplied by the Government representative that draft legislation was adopted by Congress on 29 May 2000. It stressed that it was for the Committee of Experts to examine the compatibility of this legislation with the legal requirements of the Convention. However, it noted that new complaints concerning in particular anti-union violence were still being lodged with the ILO. The Committee recalled that the full respect of civil liberties was essential to the implementation of the Convention. It urged the Government to take further measures in order to bring its legislation and practice into full conformity with the Convention at an early date. It expressed the firm hope that the Government would supply a detailed report to the coming session of the Committee of Experts on genuine progress made in law and practice to ensure the application of this Convention. The Committee firmly hoped to be in a position to note at its next session concrete and definitive progress in the trade union situation in the country.

Djibouti (ratification: 1978). A Government representative noted that according to some, notably trade union members, the Government was intolerant and opposed to freedom of association. It was more than willing to provide the Committee and anyone else who was interested with material information on this in a spirit of total transparency. It was true that some years ago Djibouti had experienced a trade union problem. But that was not the fault of the Government alone. As ILO experts who had met with the trade unions discovered, the situation of trade unions had been unstable for the following historical reasons. The trade union question, which came to a head in 1996, sprang from a political problem within the governing party, which included some influential trade union members. Certain leading political figures, as well as the union leaders who supported them, were repudiated and excluded from the party when the President signed a peace agreement with the armed movement known as FRUD in 1996. That was how the trade unions became pawns in a struggle which was not theirs to wage and which they had nothing to gain from. Therein lay the cause of the dismissals and the situation referred to by the Committee of Experts in its report. The Minister of Employment and Vocational Training recently stated the Government's position on this matter: the authorities would follow a hands-off policy on internal trade union matters. ILO experts who visited Djibouti in March of this year took note of that policy. Those experts were able to meet freely with the trade unions and reports on their meetings were drawn

up. It was also decided, as the experts requested, to delay trade union elections, which would bring an opportunity for clarification, for the Government considered this was a trade union matter for the trade unions to settle free of any meddling from outsiders. International trade unionists were welcome to observe the elections and ensure that they were free and fair: the Government did not wish to take charge of the elections.

As to the reinstatement of trade union members, the Government considered that the issue had been resolved. There were those who sought to complicate it by coming up with new claims such as reinstatement in union leadership posts. It was, however, unfair to blame the Government for interfering in trade union affairs while asking it at the same time to assign trade union responsibilities to particular individuals. Some trade union members had been reinstated since 1997. The Government had documentary evidence of this and could share it with the Committee. Neither the Ministry of Employment nor the Government would yield to pressure from international trade unions which misled former national union members on the basis of information from certain union representatives in need of a cause. The Government representative told the Committee that the Government was reintegrating FRUD combatants in accordance with last February's peace agreement. The Government, which was organizing a peace conference with individuals who only a short time ago had been laying mines, had no reason whatsoever to oppose political pluralism or freedom of association.

To close the matter of reinstatement of certain trade union leaders, the speaker told the Committee that immediate action would be taken as soon as the ILO experts returned to Djibouti. It would plainly be easier to reinstate former public servants than workers in the private sector. However, the Ministry would see that this question was settled too. The country urged the ILO to organize in Djibouti a tripartite seminar on international labour standards and the Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as a seminar on freedom of association so as to make up for the social partners' patent lack of training, which posed a major problem for the Government.

As for section 5 of the Act of Associations, as amended in 1977, the Government fully agreed that changes in the provision should be studied with a view to submitting the necessary amendments to the National Assembly as soon as possible.

Regarding section 6 of the Labour Code, which limits the holding of trade union office to Djibouti nationals, the representative observed that the provision belonged to the old Code of 1952. A new Code had been drafted and comments had been received from the employers. However, progress had been stalled by the trade unions' endless requests for more time. In any event the new draft did away with the provisions referred to by the Committee of Experts.

Lastly, concerning section 23 of Decree No. 83-099/PR/FP of 10 September 1983, which established the conditions governing the right to organize and the right to strike of public servants, the speaker emphasized that the power to requisition was confined to indispensable services (health, security and air traffic control). Nevertheless, the Government was willing to place new limits on this power if the Committee considered that necessary.

The Worker members appreciated finally to be able to discuss this case with the Government of Djibouti. It was in fact not the first time that this case was on the list of cases regarding which Government delegates might be invited to supply information to the Committee. In 1999 they would have liked to engage in a dialogue with the Government but the latter was not accredited to the Conference at the time.

In its observations the Committee of Experts expressed particular concern for the case of Djibouti. Serious violations of the freedom of association had been established there for several years and there were no indications that the situation had improved. The Committee on Freedom of Association had examined problems concerning freedom of association in Djibouti and continued to do so. In January 1998 a direct contacts mission was conducted, at which time promises were made. The Government undertook to restore the dialogue with the syndicates and the proper worker representatives. However, to this day the Committee on Freedom of Association has not been able to note any tangible progress. Meanwhile, the situation in Djibouti did not seem to have changed and one of the fundamental rights of workers was thus being violated. The violations established in law and in practice should, furthermore, not be underestimated. According to information supplied by trade unions in Djibouti, it would seem that freedom of association was, in fact, constantly being violated: trade union meetings had been prohibited by the authorities, measures had been taken to intercept trade unionists' mail, etc. These were clearly cases of interference by the Government in trade union activities. Another example of such government interventions in trade unions' activities was illustrated by the unilateral convocation of the trade union congress UGTD/UDT by the Minister of Labour in July 1999. Several workers' organizations had declared that they had been considered to be illegal organizations by the authorities and that they did not have the right to call meetings or to meet workers.

From a purely legal point of view the Committee of Experts had pointed out the contradiction that existed between several legislative provisions and the terms of Convention No. 87. This concerned, first of all, the clear contradiction between the Act on Associations, which required prior authorization for the establishment of associations, and Article 2 of Convention No. 87. The second point raised by the Committee of Experts concerned article 6 of the Labour Code which limited the holding of trade union office to Djibouti nationals. This discrimination clearly violated Article 3 of Convention No. 87 which provided for the right to freely elect representatives of the organization. Finally, the third point cited by the Committee of Experts concerned the right to organize and the right to strike of public servants. It was in fact possible to limit the right to organize and the right to strike for "public servants who exercised authority in the name of the State or in essential services in the strict sense of the term, that is, those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis". The Djibouti legislation provided exceptions which went much further and which were not in conformity with the Convention and the meaning given to this provision by the Committee of Experts.

The Worker members considered that this case raised extremely important questions as it concerned one of the fundamental human rights at work. It was high time that the Djibouti Government conform to international labour Conventions which it had ratified and that it fulfil the promises made in the past. They insisted that law as well as practice should fundamentally be changed in order to allow for true independent trade union movements in all sectors. The lack of haste the Government was displaying in improving this situation was disquieting. It should act without any further delay.

The Employer members noted that they had hardly had an opportunity to examine the case of Djibouti to date. Although the case had been on the list for discussion last year, it had not been examined since the Government had not registered itself. They further noted that this year the Committee of Experts had indicated that the Government had not sent a report. This demonstrated the Government's lack of willingness to cooperate with the supervisory bodies. The Employer members also noted the comments made by the Committee on Freedom of Association as well as the results of the direct contacts mission undertaken in 1998 which gave rise to deep concern, since there was no tangible progress to date. In addition to the oral information provided by the Government representative to the Committee, a detailed report in writing was indispensable.

Turning to the issues raised by the Committee of Experts, the Employer members noted that these could be examined in three parts. Firstly, according to section 5 of the Act on Associations, as amended in 1997, prior authorization for the establishment of associations was required for trade unions. Secondly, section 6 of the Labour Code limited the holding of trade union office to Djibouti nationals. These provisions were a clear infringement of Convention No. 87 as they placed restrictions on the right to organize. Thirdly, with regard to the provision concerning the right to strike in the public sector, the Committee of Experts had reiterated its previous definition of the limited instances in which strikes could be prohibited and had therefore deemed this provision to be in contravention of the Convention. However, the Employer members considered that this definition of the right to strike had no foundation in Convention No. 87.

In any event, it was a matter of urgency for the Government to take some action. The Employer members had understood from the information provided by the Government representative that a second direct contacts mission should be envisaged. The mandate of such a mission, however, remained unclear. With regard to the Government representative's statement that there was no obstacle to the reinstatement of union leaders in their posts, the Employer members understood this to be a concrete promise. However, in view of the long period of time involved, the Employer members considered that the Government should engage itself in effective collaboration with the ILO. To this effect, it was indispensable for the Government to supply a detailed and comprehensive report reflecting all the issues which had been raised in the comments of the Committee of Experts. This case would then be re-examined in this Committee if necessary on the basis of the new information and the subsequent comments by the Committee of Experts.

The Worker member of Senegal stated that the case of Djibouti gave rise for concern. It was rare to observe cases of such flagrant violations perpetrated by a Government against trade unions. In July 1999 the Government organized a sham "joint" congress of the UDT and UGTD which prevented holding ordinary congresses of these trade union centrals. The Government wanted to impose leadership that it had chosen on these trade union organizations. It

was important to underscore some of its acts, such as confiscation of post office boxes of the aforementioned trade union organizations, resulting in misrouting of their mail; the substitution of the legitimately elected union representatives by those working for the Government; systematic and generalized harassment of union leaders and affiliates of these organizations; the prohibition of free union meetings in enterprises; the forcible closure of the headquarters of the UDT and UGTD; and the arbitrary dismissal of leaders of these two trade union centrals. Despite promises made in 1998 by the Government to the direct contacts mission, no tangible progress could be observed. This problem had gone on for too long, and the Government must take all necessary measures to reinstate union leaders terminated since 1995; allow free organization of ordinary congresses of the UDT and UGTD; and ensure the respect of trade union freedom as well as the right to organize and bargain collectively. Firm conclusions must be adopted on this case by the Committee given the grave violations of trade union freedom which persist in Djibouti.

The Worker member of France indicated that if the Committee of Experts, citing the Committee on Freedom of Association, had not found any tangible progress in the restoration of freedom of association in full, then in reality one should speak of a deterioration in the situation, with government interference in the functioning of trade unions. The leaders of the trade unions UDT and UGTD who were dismissed in September 1995 had not yet been reinstated. Furthermore, in 1996 and 1997, teachers had been dismissed as a result of their participation in a strike. In this respect, it would be useful to be informed of measures taken by the Government in response to requests for reinstatement made this year by trade union leaders who had been dismissed. With regard to the organization of free and democratic elections, the speaker noted the participation of police officers in the vote to renew the Executive Committee of affiliates of the UDT and UGTD, in the place of employees of the Ministry of Transportation who were on strike the day of the election. The Government had furthermore blocked within the Ministry for Employment and Solidarity the list of delegates convened to participate in the election of the President and Secretary-General of the UDT and the UGTD. He raised the question of the sincerity of the Government's engagement to no longer interfere in the activities of trade unions. The Government had a restrictive attitude toward the exercise of the right to strike, and it was especially with regard to the public service that it used its power of requisition. Moreover, the Government continued to interfere frequently in the activities of trade unions. It should therefore be called upon to take concrete measures to restore freedom of association in Djibouti, both in law and in practice.

The Worker member of Rwanda stated that he was scarcely convinced by the statement of the Government member of Djibouti. The latter had invoked the economic and conflictual situation existing in his country in justification of violations of freedom of association, and further qualified the trade union situation in his country as a question of slight importance, despite the concerns expressed in this connection by the Committee on Freedom of Association. Regarding the question of the reinstatement of the dismissed trade unionists, the criteria employed should be examined in view of the fact that only some of them had been able to benefit from reinstatement. He considered that the statements of the Government member constituted a further diversionary tactic and that violations of trade union rights continued. The Government of Djibouti must stop these tactics and comply with the provisions of Convention No. 87.

The Government representative of Djibouti said that the statements of certain Worker members were exaggerated. References to cases of imprisonment, to manoeuvres intended to install persons in the pay of the Government as trade union leaders, and the seizure of post office boxes were laughable. However, the Government had no time for such amusement. It had proved its good faith, in particular by allowing the mission of ILO experts to act freely. Moreover, the reinstatements of dismissed trade union leaders were continuing, and were being examined case by case in full respect of the law. The Government reiterated its interest in, and its requests for, technical assistance for the organization of tripartite training seminars on international labour standards for trade unionists.

The Worker members noted that serious contradictions remained between national legislation and practice, on the one hand, and the Convention, on the other, without the Government having provided sufficient guarantees to allow an improvement in the situation. The Government must give effect to the promises made during the 1998 direct contacts mission as well as those renewed within this Committee. If the Government was motivated by the political will necessary to comply with the provisions of the Convention, effective application thereof would follow, if necessary with the technical assistance of the Office. The Worker members went on to stress the need to send in the reports due on the ratified Conventions, on the grounds that the latter provide the only means of noting an improvement in the situation.

The Employer members noted that, up to now, discussions with Djibouti had taken place only occasionally. Moreover, the information now provided by the Government representative was fairly general in nature. Pointing out that the Committee of Experts had noted several shortcomings in the legislation with regard to the Convention, the Employer members urged the Government to take measures to repeal or amend the provisions mentioned, which clearly violated the provisions of the Convention. The Employer members also urged the Government to promptly supply a report to the Committee of Experts responding in detail to all the issues raised in the observation at the earliest possible date.

The Committee took note of the oral information supplied by the Government representative and of the discussion which followed. The Committee shared the regret expressed by the Committee of Experts that the Government failed to send a report. The Committee stressed with great concern the lack of cooperation by the Government. It regretted in particular the absence of the Government of Djibouti at the International Labour Conference for the last two years. The Committee was deeply concerned by the situation of non-compliance over a number of years with the requirements of the Convention. It recalled that a direct contacts mission of representatives of the Director-General of the ILO went to Djibouti in January 1998 and that specialists on the multidisciplinary team (MDT) had two missions in the country in December 1999 and March 2000 with no significant results. It insisted on the importance for workers in Djibouti of being able to elect their representatives in full freedom. It urged the Government to reinstate the union leaders of UGTD/UDT who had been dismissed from their jobs for legitimate union activities five years ago and to allow the workers to elect democratically their union leaders at the unions' federation and confederation levels. It also urged the Government to remove all the discrepancies existing in the law in relation to: the forming of trade unions without previous authorization; the free elections of unions' representatives; and, the right of civil servants' unions to organize their activities without interference from the public authority that would impede their lawful exercise. The Committee expressed the firm hope that the Government would resume active cooperation with the supervisory bodies and would promptly supply a detailed report with answers to the points raised to the Committee of Experts on the concrete progress made both in practice and in law to ensure the application of this fundamental Convention.

The Government member of Djibouti wished that the conclusions of the Committee reflect his statements concerning the absence of interference by the Government in the exercise of trade union freedom and the renewed commitment of his Government in this respect.

Ethiopia (ratification: 1963). A Government representative stated that, with regard to the issue of trade union diversity within an enterprise, Ethiopian labour law provided for the possibility of forming multiple industrial federations and confederations, although it permitted the formation of only one trade union per enterprise. This limitation had its origins in the history of the trade union movement in Ethiopia and his Government's lack of experience with regard to the possibility of having multiple unions at the enterprise level. Consultations conducted on this issue revealed that the trade unions believed that the current legislation made them stronger and that introducing multiple unions in an enterprise would weaken their collective bargaining position. The employers' organizations in Ethiopia also supported this longstanding practice and considered that it helped maintain industrial peace in the country. Therefore, the law reflected both the positions and practices of the social partners. The Government did not intend to modify the national legislation in this regard since there had never been a problem in applying the law or enforcing workers' rights to establish and join trade unions of their choice. Noting the longstanding nature of this practice, the Government representative stated that this was the first year that the Committee of Experts had requested the Government to guarantee the possibility of trade union diversity at the enterprise level. He assured the Committee that, in principle, Ethiopia was not opposed to this possibility. Therefore, his Government would hold tripartite discussions to determine the appropriateness of amending the labour law to bring it into conformity with the Committee of Experts' comments.

Referring to the exclusion of teachers from the labour legislation, the Government representative noted that the Ethiopian Teachers' Association was established in 1964, in accordance with the provisions of the Ethiopian Civil Code. Since that time, it had remained active in Ethiopia and had also affiliated with international unions. Following the adoption of the 1994 federal Constitution, teachers and other government employees had been guaranteed the right to form trade unions and other associations in order to bargain collectively with employers or other organizations affecting their interests. In accordance with the relevant constitution-

al provisions, the Ministry of Labour and Social Affairs and the Civil Service Commission had been preparing draft procedures and regulations on the formation of trade unions and collective bargaining to be included in the draft civil service law. During the preparation of the draft law, the concerned government employees would continue to enjoy their rights of freedom of association and collective bargaining provided for under the Civil Code.

With regard to the power of the Ministry of Labour and Social Affairs to cancel the registration of trade unions under certain circumstances, the Government representative noted that the Ministry of Labour and Social Affairs had submitted draft legislation to the Council of Ministers which would vest the power of cancellation solely in the Ethiopian courts. Therefore, the administrative authorities would not have the power to dissolve or suspend organizations. The Ministry was currently awaiting approval of the amendment and its adoption would be communicated to the Office. In this regard, the speaker thanked the ILO Area Office in Addis Ababa for facilitating the organization of the tripartite discussion on this matter.

Finally, the Government representative referred to the procedures in Ethiopian legislation on the exercise of the right to strike. First, he noted the nature of the dispute resolution mechanisms which must be utilized before a strike may be called. This binding procedure was handled by a para-judicial body, the Labour Relations Board, which sought to resolve labour disputes and served as a body of last resort before a strike was called. He believed that there was a misunderstanding on this point since the Committee of Experts apparently considered that the Labour Relations Board formed part of the Ministry of Labour and Social Affairs, while in fact the Board functioned as an independent tripartite body. Therefore, the issue of binding arbitration would not arise. Secondly, he referred to the definition of essential services in the context of the right to strike, noting that the issue of limiting the definition of essential services was being discussed in the Ministry. In its review of the matter, the Government was also seeking information from other countries regarding their experiences. At the appropriate stage, it would also seek assistance from the Office to provide technical support in organizing tripartite discussions on the matter.

In conclusion, the Government representative expressed regret for any delays in reporting as well as in performing certain undertakings, such as enactment of the suggested legislative amendments. Despite the adverse circumstances in his country, which included severe drought and a war, the Government representative reiterated Ethiopia's commitment to comply fully with ratified ILO Conventions.

The Worker members noted that this was a serious case which had been before the Committee on numerous occasions and that, throughout the past seven or eight years, Ethiopia had repeatedly promised to bring its legislation into conformity with the provisions of the Convention. The Worker members attributed the Government's non-compliance in this regard to the position taken by the Government representative in his statements denying any violations of the Convention.

Ethiopian legislation effectively established a trade union monopoly at the enterprise level. Referring to the comments made by the Committee of Experts, the Worker members indicated that, since 1993, the Committee had been urging the Government to amend its legislation. While acknowledging the adverse circumstances Ethiopia was facing, the Worker members nevertheless pointed out that the issues before the Committee had been raised prior to the outbreak of the war and that the Government's response at that time had been no quicker. Referring to the second sentence in the comments of the Committee of Experts regarding Ethiopia's interference in trade union activities, the Worker members stated that the Committee of Experts' sentence referred to incidents of abuse of power. Last year, a long list of examples had been cited of the Government's interference, including the murder, arrest and imprisonment without trial of trade union leaders and their mistreatment while in prison, which had led to the deaths of two trade union leaders. The Government's argument that these trade union leaders had been jailed for engaging in terrorist activities was not credible.

Referring to the case of the President of the Ethiopian Teachers' Association, Dr. Taye Woldesmiate, the Worker members referred to the findings of the Committee on Freedom of Association which had strongly urged the Government to take steps to secure Dr. Woldesmiate's immediate release. The Committee of Experts had not referred to the conclusions and recommendations of the Committee on Freedom of Association, nor had the Committee of Experts reacted to the issues raised in the Conference Committee's discussions on Ethiopia. The Worker members deplored this.

The Worker members noted that the conclusions and recommendations of the Committee on Freedom of Association stemmed from its examination of Ethiopian law and practice. It was therefore appropriate to cite those findings, particularly those interim recommendations urging the Government to ensure that all union members and leaders detained or charged were released and that those dismissed were reinstated in their jobs and given compensation for lost wages and benefits.

The Worker members noted that, since last year's Conference, Dr. Woldesmiate had been convicted on charges of conspiracy against the State and sentenced to a prison term of 15 years. The ICFTU had alleged that the trial was improperly conducted and that Dr. Woldesmiate's due process rights had not been observed. An Ethiopian judge who had raised the question of the independence of the judicial system had been dismissed. Noting that this case was still before the Committee on Freedom of Association, the Worker members hoped that the Committee of Experts would take those proceedings into account.

This was clearly a case for a special paragraph since it involved serious and protracted violations of a fundamental Convention. While the Government had made repeated statements promising to comply with the Committee of Experts' requests, the Worker members wished to see the Government take measures immediately and report on the steps taken to satisfy fully the recommendations made by the Committee of Experts before its November meeting, including the answers to the points raised by the Committee on Freedom of Association in paragraph 236(a), (c) and (d) of its most recent report on Case No. 1888. Noting the Government representative's statements that work on the legislative amendments could be completed quickly, the Worker members saw no reason why the Government could not report on these amendments before the Committee of Experts' next session. If the Government of Ethiopia committed itself to this undertaking, the Worker members would refrain from requesting a special paragraph and would be willing to wait and assess the matter again next year. Otherwise, the Worker members would be forced to request the Committee to express its grave concern and to place these concerns in a special paragraph.

The Employer members noted that this case had been discussed at the past two sessions of the Conference Committee and was once again before the Committee. The observation of the Committee of Experts repeated its previous comments, adding only that the limitation of one trade union per undertaking applied only to those undertakings with 20 or more workers. The Employer members pointed out that the legislation in question also excluded teachers, state administration officials, judges and prosecutors from the scope of application of its provisions on the right to organize. While judges and prosecutors might not be the most typical representatives of workers in the civil service, the Employer members nevertheless considered that these exclusions constituted a clear violation of the principle of freedom of association established in the Convention. With regard to the powers vested in the Ministry of Labour to cancel the registration of unions, the Employer members considered this to be in clear violation of the Convention. In respect of the broad restrictions on the right to strike and the Committee of Experts' definition of essential services the Employer members recalled their longstanding reservations in this regard. In conclusion, little had been done by the Government in recent years to bring its law and practice into conformity with the requirements of the Convention.

The Employer members recalled the Government's statement to the Conference Committee in 1994 that new legislation was being drafted to bring Ethiopian law into compliance with the Convention. This statement had also been made to the Conference Committee in 1999. Referring to the Government representative's statement that restrictions limiting the establishment of trade unions to one union per enterprise was in the interests of both employers and workers, but that the possibility of establishing more unions could be discussed in a tripartite committee at the national level, the Employer members pointed out that the Convention established workers' and employers' rights to establish and join organizations of their own choosing to promote their occupational interests. The Government needed to provide for the possibility of trade union diversity in order to conform with the requirements of the Convention and this subject was not appropriate for tripartite consultation, since trade union pluralism was one of the essential principles of the Convention.

The Employer members noted the Government representative's statements that legislative amendments would be possible in respect of teachers' right to organize and that new legislation was under examination with regard to the cancelled registration of former unions. However, the Employer members pointed out that the information provided by the Government was too vague and that it should supply detailed answers to the Committee of Experts' comments. Therefore, the Employer members recommended that the Committee's conclusion should urge the Government to supply a detailed report indicating steps taken to amend Ethiopian legislation and practice in order to comply with the Convention. Alternatively, the statements made by the Worker members recommending that a special paragraph be issued by the Committee should be considered.

The Worker member of Rwanda stated that the Ethiopian case was very serious in that not only legal texts but also human lives were at stake. The Government had continued to destroy these unions which were not under its control. The Ethiopian Teachers' Association (ETA) had been harassed since 1993: on 3 June 1999 its President was sentenced to 15 years' imprisonment and two of its leaders had died in prison following harsh treatment. The Government of Ethiopia must respect the life of trade union members, end harassment of the ETA, free imprisoned trade union members, reinstate them in their positions, and ensure the application of Convention No. 87.

The Worker member of the United Kingdom joined in the comments made by the Worker members as well as those made by the Worker member of Rwanda. He stated that the Ethiopian Government's interference with trade union activities had not only extended to control of the national centre of the Central Ethiopian Trade Union (CETU), but also to eight of its affiliates over the past few years. He noted that, since the beginning of 1999, the Government had constantly harassed the International Federation of Banking and Insurance Trade Unions (IFBITU) which was the one remaining affiliate still independent of government influence. In addition, trade unionists allied to IFBITU President Abiy Melesse had been intimidated, harassed and detained, with many having been forced into exile. In 1999, the Ethiopian authorities placed further pressure upon the leadership of the union, marginalizing it in four out of the five institutions where it was organized. Government security forces were deployed to prevent union leaders from entering their offices. Subsequently, illegal trade union elections were held and the new leadership took the union back into the CETU, thereby placing it under government control.

He emphasized that IFBITU President Abiy Melesse now feared for his life. He recalled that the supervisory bodies of the ILO had repeatedly observed that it was impossible to exercise trade union rights effectively in an atmosphere of fear and violence. He endorsed the comments made by the Worker members and the Worker member of Rwanda with regard to the continued detention and lack of due process in the case of the President of the Ethiopian Teachers' Association, Dr. Woldesmiate, whose case had been followed with great concern, not only by the ILO and the international trade union movement, but also by teachers' unions affiliated to the TUC in the United Kingdom.

He concurred with the Worker members' statements that allegations that the President of the Ethiopian Teachers' Association was a terrorist were simply not credible. Noting the seriousness and longstanding nature of the case, he joined the Worker members in calling for the Committee to issue the strongest conclusions possible in respect of this matter.

The Worker member of Greece said that the tragic situation of Ethiopian workers could not be reflected in a page and a half of comments. While it was true that in any organized society the different categories of workers did not have the same possibilities of free speech, it was very disturbing to know that in Ethiopia even judges and public prosecutors could not set up associations to defend their professional interests. In these conditions, it was difficult to imagine that unskilled workers or agricultural workers would have the right of free speech.

Moreover, little pleasure could possibly be felt concerning the return to dialogue with the Government of Ethiopia given that the announcement that the law would shortly be modified had been made in 1994. Six years after this statement, the Government should undertake to act within a definite time frame. Invoking old practices was no excuse for new delays.

The Worker member of Senegal noted that following accession to independence, governments had been able to lure trade unions into participating in united fronts with a view to economic reconstruction of their countries. This period was now over and trade union pluralism was today a reality in Africa. The observations made by the Government representative of Ethiopia were not acceptable. This was why this case should be mentioned in a special paragraph. It would also be appropriate to consider other measures that could be envisaged to bring an end to the harassment of the Ethiopian workers and ensure that they enjoyed freedom of association and the right to organize in order to defend their interests.

The Government representative of Ethiopia stated that he had listened carefully to the comments made by the Employer members and Worker members as well as other speakers and thanked those who had made constructive comments and suggestions. As in previous years, some delegates had again raised the issue of cases concerning some of the former members of the executive committee of the Ethiopian Teachers' Association, particularly referring to the trial and conviction of Dr. Taye Woldesmiate. In the past, his Government had provided detailed responses to these allegations. Referring to the case of Dr. Woldesmiate, the Government representative asserted that the trial and conviction was not related to Dr. Woldesmiate's former membership in the Ethiopian Teachers' Association. He maintained that Dr. Woldesmiate had been duly charged, tried and found guilty for engaging in violent actions against the public order. He had defended himself with a lawyer of his choice and the constitutional guarantees of a speedy and impartial trial had been fully observed, as had his human rights during detention. Noting that this matter was being discussed in the Committee on Freedom of Association, he offered to provide the English translation of the court's judgement once it became available. He also assured the Committee that, in accordance with the request made by the Worker members, his Government would supply all information on progress made in connection with the case of the Ethiopian Teachers' Association.

He stated that the problems relating to the Industrial Federation of Banking and Insurance Trade Unions (IFBITU) had been resolved and that the IFBITU was now an affiliate member of the Confederation of Ethiopian Trade Unions. Concerning the amendments to the Labour Proclamation, Ethiopia had fully committed itself to bring its legislation into conformity with the provisions of ratified Conventions. He noted that the issue of the cancellation of registration of unions had already been resolved and that the power to cancel the registration of such organizations had been vested exclusively in the Ethiopian courts. The Government would notify the Office as soon as this amendment was adopted.

In connection with the issue of the right to organize of civil servants, including teachers, progress had been made in this area. The Federal Constitution and the Ethiopian Civil Code fully guaranteed the right to form trade unions and the right to collectively bargain. What had been lacking previously were procedures and regulations determining the manner in which civil servants exercised these rights. These procedures and regulations had been under consideration for a long time and were now finalized. He again informed the Committee that these procedures might well be adopted by the end of this year. The Government representative assured the Committee that his Government would submit reports on the follow-up measures requested by the Committee of Experts and the Conference Committee before the end of 2000 and reiterated that his Government would continue to extend its full cooperation to the ILO supervisory mechanisms. He reaffirmed Ethiopia's strong commitment to the fundamental principles of the ILO.

In response to comments made by the Worker members, the Government representative affirmed his Government's commitment to report to the Committee of Experts before its next session on the application of the Convention in practice, including providing detailed responses to all the issues raised in the Committee of Experts' comments and providing evidence of tangible progress made in amending the legislation concerned to bring it into conformity with the Convention. He noted the problem with the issue of the right to strike, concerning essential services, but maintained that the moment was not propitious to finding a solution. Ethiopia was attempting to obtain information from other countries on their experiences in this regard and might not have completed its study within the next six months. However, he agreed to provide a detailed report to the Committee of Experts on all concrete progress made in this regard.

The Worker members referred to what they had said in their first statement on the need for a special paragraph, since they noted that the Government representative had not given any prospect for future action to be taken by Ethiopia. It was necessary to make progress in a case which had been at a standstill for years. While recognizing that this case had some complex aspects that could not be resolved overnight but on which the Government apparently was working, notably the problem related to the essential services, the Worker members nevertheless wished to see evidence of the Government's commitment.

The Worker members did not agree with the Government representative that the union members and leaders mentioned were "former members" of the Ethiopian Teachers' Association, but rather considered them the leaders of that union who had wrongfully been pushed out of their jobs. Moreover, it was not enough for the Government to provide information on the legal proceedings against Dr. Woldesmiate. The Worker members wanted the Government to provide specific responses on the issues regarding the lack of due process in Dr. Woldesmiate's trial raised in the proceedings before the Committee on Freedom of Association. The Worker members also requested responses from the Government on the issues raised in the interim recommendations of the Committee on Freedom of Association regarding the release of detained members and leaders of the union, as well as reinstatement and compensation for those union members and leaders dismissed from their jobs.

The Worker members requested the Government to provide responses to the Committee of Experts before the end of the year on three main points. First, they requested detailed responses regarding Ethiopia's application of the Convention in practice. Second, they requested the Government to report to the Committee of Experts before the end of the year on measures taken to bring the law

into conformity with the Convention. They noted the Government representative's statements that Ethiopia was not opposed to establishing the possibility of trade union pluralism subject to the opinions of employers' or workers' organizations. On this point, however, the Worker members concurred with the Employer members, noting that regardless of the opinions of the social partners, the Government was required to bring its legislation into conformity with the Convention. The Worker members wanted nothing more nor less than to hear that the Government had complied with its obligation in this regard. As to the issue of the cancellation of the registration of trade unions, the Worker members requested the Government to report to the Committee of Experts in detail on the manner in which this problem was resolved. In addition, with regard to the right to strike and the definition of essential services, the Worker members noted that the Government was conducting a comparative study on this issue. The report provided should nevertheless reflect the progress made in this area and should identify the technical assistance needed from the multidisciplinary advisory team in Addis Ababa. The Worker members would consider it acceptable if the report provided evidence of compliance on the first two points and evidence of progress on the third point.

In response to comments made by the Government representative, the Worker members stressed that, since the Government was apparently close to amending its legislation, it should be able to report tangible progress in this regard. In light of the Government's undertaking to provide before December next full and detailed reports on the three points mentioned, including evidence of compliance with the Committee of Experts' requests, the Worker members agreed to defer consideration of a special paragraph.

The Employer members found that the issues in the case were quite clear. With the exception of the question of the right to strike, which they viewed in a different light from the Worker members, all of the other matters raised by the Committee of Experts required amendments to the legislation and changes in national practice. They regretted that the statement by the Government representative had been rather vague and unclear. In particular, his position on trade union pluralism, and his statement regarding its dependency on tripartite consultation, was simply inappropriate. The Government should provide a detailed reply addressing all the points raised by the Committee of Experts, which could assess whether the Government was prepared to amend its law and practice. The Government should be sent a very urgent reminder that action was required to give effect to the Convention, and not merely promises. A clear and precise report should therefore be supplied promptly, which could provide a good basis for the Committee to discuss the case once again next year.

The Committee noted the statement made by the Government representative and the discussions which took place thereafter. The Committee shared the serious concern of the Committee of Experts with regard to the trade union situation, and in particular in relation to the Government's interference in trade union activities. The Committee was deeply concerned by the fact that a serious complaint remained pending before the Committee on Freedom of Association concerning government interference in particular with the functioning of the Ethiopian Teachers' Association and the detention of its president since May 1996, as well as the arrest, detention, dismissal and transfer of other leaders and members. It recalled that the Committee of Experts had requested the Government to indicate the precise provisions permitting teachers' associations to promote the occupational interests of their members and to provide information on the progress made in adopting legislation to ensure the right to organize for employees of the state administration. It also recalled the concern raised by the Committee of Experts about the cancellation of the registration of a trade union confederation, as well as broad restrictions placed on the right of workers' organizations to organize their activities in full freedom. The Committee strongly urged the Government to take all the necessary steps as a matter of urgency to ensure that the right of association was recognized for teachers to defend their occupational interests, that workers' organizations were able to elect their representatives and organize their administration and activities free from interference by the public authorities and that workers' organizations were not subject to administrative dissolution, in accordance with the requirements of the Convention. It urged the Government to respect fully the civil liberties essential for the implementation of the Convention. It recalled that the International Labour Office was at the Government's disposal to provide the technical assistance which might be necessary to assist in overcoming obstacles to the full application of the Convention. The Committee took note of the statement of the Government representative committing itself to changing the legislation and bringing it into conformity with the Convention. The Committee requested a report before the end of this year about the last question in the observation of the Committee of Experts. The Committee urged the Government to supply detailed and precise information on all the points raised in its report due this year to the Committee of Experts on the concrete measures taken to ensure full conformity with the Convention, both in law and in practice. The Committee expressed the firm hope that it would be able to note concrete progress in this case next year.

Guatemala (ratification: 1952). The Government has supplied the following information:

The Government has sent a copy of draft reforms to the Labour Code, to the law on trade unions, to the regulations on the right of public servants to strike, and to the Penal Code, so as to bring national legislation into conformity with the Convention and to introduce in domestic law the fundamental principles and standards of trade union law as set forth in the International Labour Conventions ratified.

These texts were forwarded by the President of the Republic to the President of the Congress on 17 May 2000 for review and approval by the Congress.

In addition, before the Conference Committee, a Government representative, Minister of Labour and Social Protection, stated that the Government had complied with its obligation to draw up draft reforms to the law to bring the labour legislation into line with Convention No. 87 and had submitted this to the legislature for its approval. The aim of the draft was to resolve the majority of the observations made by the Committee of Experts. He expressed his satisfaction in participating in the present meeting of the Committee, since he was convinced that substantive standards must have mechanisms allowing verification of compliance, particularly through the supervisory machinery of the ILO, if they were to avoid becoming meaningless statements. Last year at the 87th Session of the International Labour Conference, the previous Government of Guatemala had stated before this same Committee its commitment to a revision of its labour legislation, so as to comply with Convention No. 87. Contacts had subsequently been established with the ILO Regional Office to request technical assistance. The Committee of Experts had asked the Government to inform it in its next report on all measures adopted in this connection. This report had to be returned by the month of September of this year, which meant that the Government had complied with its obligation to submit a report four months earlier than called for. The present Government of Guatemala took office on 17 January 2000 and had fulfilled this prior obligation within only four months, to execute a state engagement, since the Government held the firm conviction that the obligations of the country must be respected and honoured. Moreover, the Government was convinced that society must live in respect of its own rules as the only means of achieving peace and progress.

Within the field of employment, the Government was firmly convinced of the need to support bilateral relations between employers and workers, in compliance with article 106 of the political Constitution of the country which protected and encouraged collective bargaining, for the purpose of which the existence of trade union organizations which could truly represent the interests and rights of the workers was unquestionably necessary. At all events, this was mandatory under the Labour Code, which established in article 211(1) that the Ministry of Labour must protect and develop trade unionism.

Since the Government's conviction was to act speedily, and because one of the fundamental pillars of the Government's programme was to combat poverty, which could be achieved, inter alia, through justly remunerated employment, he read the note dated 17 May from the President of Guatemala which had accompanied the draft reforms to the legislature. This read as follows: "It is my pleasure to submit to you the draft reforms to the Labour Code, to bring the legislation of Guatemala into compliance with Convention No. 87 ratified by our country. The State of Guatemala, as a Member of the International Labour Organization, is obliged to give effect to this Convention, incorporating into its national law the guiding principles or standards regarding the right of freedom of association and other provisions contained in the international conventions approved and ratified by Guatemala in the field of employment. The Government of the Republic, through the powers conferred on my office under article 183(g) of the political Constitution of the Republic, submits this draft law for consideration and approval by the Honourable Congress of the Republic, and considers it necessary to include within the Labour Code the provisions concerning freedom of association in such a way as to fulfil the obligation of the State of Guatemala as a Member of the International Labour Organization."

The draft reform included standards of compliance and provided for sanctions to discourage violation of the provisions of the Labour Code. A draft was also being prepared to update the Procedural Labour Code to ensure that the labour courts should be fast and efficient. These drafts would be submitted to employers' and workers' organizations at the ILO Area Office. The Government representative stated his certainty that the Committee would take note in its conclusions of the progress achieved by the Government

in this area, and that these conclusions would encourage Congress to approve the draft definitively and transform it into the law of the Republic.

The Worker members thanked the Government representative for the information he had supplied and observed that Guatemala had been on the Committee's agenda for a very long time, much of it regrettably for this very case. In its comments the Committee of Experts listed various matters relating to infringement of the right to organize, which was at odds with Convention No. 87. These included the supervision of trade union activities; numerous restrictions on trade union activity based on nationality; the requirement to declare the existence of a criminal record; that the workers should be active in the enterprise; several restrictions on the right to strike, including the imposition of prison sentences of up to five years.

The Committee on the Application of Standards has examined this case since the 1980s and devoted a special paragraph to it in 1985. Since 1990 the Committee had discussed the case on six separate occasions. In 1985 a direct contacts mission took place. Numerous complaints had been put to the Committee on Freedom of Association bred by the tense social conditions and anti-trade union violence in the country. In 1997 the Worker members shared with others the hope that the peace process would usher in marked improvement in social conditions and checks on the impunity associated with breaches of freedom of association. But in 1999 it appeared that the Government was relying on procedural questions to justify its inaction.

In the absence of progress since 1991 and in view of the persistence and serious problems relating to the implementation of Convention No. 87, the Worker members again appealed to the Government to adopt as soon as possible suitable measures to ensure the application of a Convention which is fundamental both in law and in practice. They also requested that the conclusions of the Committee should appear in a special paragraph. The Worker members referred to the statement made by the Employer members last year: "On the issue of the interference of public authorities in the internal administration, programmes and the structure of trade unions … changes without delay were required since these matters had been under discussion for a number of years." In his statement to the Conference in 1999 the Government representative had said that his Government was aware that its compliance with Convention No. 87 had been at the centre of debate for a number of years both in the Committee of Experts and the Conference Committee and that the matter could no longer be deferred.

The Worker members said that their reason for quoting from the previous year's debate was that once again they had been forced to acknowledge that though the Committee had received promises it had not seen any progress. Year after year the Government had said that it was moving in the right direction and change was on the way. But in the end the Committee of Experts passed on the same familiar comments, reporting persistent defiance of freedom of association. The Worker members concluded that in view of the persistent breach of Articles 2 and 3 of the Convention, particularly Article 3, paragraph 2, the Committee should request that national law and practice reflect draft amendments to the Labour Code, trade union law and the rules governing civil servants' right to strike as well as amendments to the Penal Code to bring national legislation into line with the Convention and to introduce the fundamental principles and standards of freedom of association into municipal law in harmony with the International Labour Conventions ratified by the country.

The Employer members noted that the case of Guatemala in respect of Convention No. 87 had been examined on several occasions in recent years. This fact was regrettable since it demonstrated that the Government was not complying with its obligations under the Convention. If one compared the comments made by the Committee of Experts this year with those of last year, there was very little information that was new.

Turning to the issues raised in the comments made by the Committee of Experts the Employer members noted that these could be divided into two parts. The first part dealt with legislative provisions of the Labour Code which allowed for the possibility of Government interference into the structure and activities of trade unions. This part was a clear violation of the Convention. The second part of the Committee of Experts' comments dealt with legislative provisions relating to labour disputes and, in particular, the right to strike. As mentioned in previous years, the Employer members recalled that Convention No. 87 did not regulate the right to strike. It was demonstrated in the preparatory notes drawn up when the Convention had been elaborated that it had not been intended to regulate the right to strike. Hence, the Employer members did not consider that Convention No. 87 had been violated with regard to the issues concerning the right to strike.

Turning to the national tripartite committee concerning international labour issues, the Employer members were of the view that its work was not very effective. There appeared to be a lack of political will by the parties represented in this national committee to collaborate. The Employer members considered that the current situation in Guatemala was also the long-term consequence of the civil war. Although a peace agreement had been concluded by the parties, the process of reconciliation was long and it was fairly difficult to reach a real and lasting peace. However, while this issue complicated matters, it was not an excuse for the Government to infringe the Convention.

The Employer members therefore considered that the Government should be urged, in the Committee's conclusions, to take measures to bring its legislation in line with the provisions of the Convention. However, the conclusions should also reflect that the Government had supplied a draft bill to the Office in May. Nevertheless, it should also be noted therein that the Committee should await the comments of the Committee of Experts on the draft legislation before coming back to this case, if necessary.

A Worker member of Guatemala stated that he had been informed by the statements of the Minister and by the written information provided by the Government of a draft law before Congress aimed at bringing legislation into conformity with Convention No. 87, made in relation to the repeated requests of the Committee of Experts. He stated that draft laws were manipulated in Congress and that there were no guarantees that the requirements of the ILO would be respected. Nevertheless, the challenge had been raised. Furthermore, he underlined the absence of political will which would ensure respect for the existence of trade unionism in practice. The speaker listed various examples of the systematic violation of the right of freedom of association. Trade union actions were penalized and criminalized with the aim to persecute, intimidate, demoralize and destroy the trade union movement and its organizations. Agricultural workers who had requested raises in wages were the object of criminal charges and were condemned to 20 days' incarceration; the trade union SITRABI and its leaders were the object of criminal proceedings, and 200 persons had raided the headquarters of the organization and made death threats against its officers. If one looked beyond the proposals of the Government, the reality was dramatic and stark. In industry, banking and agriculture, an instruction manual was in use on how to obstruct or eliminate trade unions. Dozens of trade union officials had been assassinated, and the highest judicial authorities did not prosecute the murderers, creating a situation of impunity. It was a matter of urgency to address the situation because, should workers lose confidence in the law, they would seek other means.

The Employer member of Guatemala stated that he could not refer to the draft law of which the Minister had spoken, since he had not seen it. The employers had only been shown the draft yesterday: clear evidence of its non-tripartite basis. To comply with the recommendations of the experts, one of the fundamental principles of the ILO had been violated (in complying with Convention No. 87, Convention No. 144 had been violated); under the pretext of applying the law, the law had been violated. As everyone knew, the Machiavellian saying, that the end justifies the means, was tenable neither ethically nor legally.

The recently elected authorities in Guatemala had governed for less than five months and this was the second case of violation of tripartism; which, beyond the simple ratification of Conventions, was developing into a healthy practice in Guatemala; thus, for example, important changes had been approved, such as the reforms to the Labour Code derived from the peace agreements. On the first occasion tripartism had been violated, when the Executive had submitted to the Congress of the Republic the draft concerning employment legislation which had just been adopted as a law of the Republic, the employers had been obliged to show their rejection of such a practice by leaving the tripartite discussion, since if genuinely important issues were not brought to its notice, such discussion had no meaning. This was the second occasion on which tripartism had been violated and he therefore had no choice but to address the Committee in these terms. The Minister might claim that consultation had not taken place as a result of the employers' attitude, following the first violation of tripartism referred to earlier, when the employers had quit tripartite discussion. This position was, however, untenable, since the employers had neither been convened as they should have, nor had they received a copy of the draft law, as was appropriate in application of tripartism. He questioned whether imposition without dialogue was to be the guiding principle on which labour relations and government in his country were to be based.

Perhaps the experts would not be concerned in respect of Convention No. 87, but they would certainly be so regarding the practices contrary to Convention No. 144. To solve one problem, another had been created, with serious consequences for the dialogue and concertation so necessary to Guatemalan democracy and peace, the construction of which had begun at the end of 1996. In conclusion, the Employers called on the Government to return to

tripartism as the best way of guiding relations in the production sector. He requested that the conclusions of the present Committee should reflect the fact that the draft to which the Government had referred regrettably had no tripartite basis.

The Worker member of Norway, speaking on behalf of all the Workers from the Nordic group, fully supported what had been stated by the Worker members. Guatemala had ratified Convention No. 87 in 1952. In its comments on the Government's report, the Committee of Experts had once again recalled that there were a number of restrictions on the right to organize and the right to strike in the Labour Code. These restrictions reflected the completely unacceptable attitude on the part of the authorities vis-à-vis trade unions and trade union activities. By not having brought its legislation into conformity with the Convention, the Government in fact tolerated and contributed to the violations of the Convention it had ratified, but by no means implemented.

The Norwegian trade union movement was well acquainted with abuses towards workers in the country, especially in the banana sector, through direct cooperation with its sister union in Guatemala, UNSITRAGUA, and through reports from the ICFTU and Amnesty International. Workers were dismissed for no other reason than union membership and the authorities participated actively in the harassment of workers. When a subsidiary of one of the main multinationals in the banana sector dismissed 1,000 workers in September 1999, workers were gravely mistreated. Worse still, in October of the same year, paramilitaries had broken into trade union premises, held trade union leaders at gunpoint and forced them to sign resignation letters. Although the trade union premises were only 400 metres away from the police station, at no point did the police do anything to investigate these grave violations. The passiveness of the Department of Labour in the *maquila* industry (Export Processing Zones) was well known. While there were 11 unions in the sector in 1996, there were none today. Factory owners dismissed union members and "closed" plants with organized workers, only to reopen them and hire more compliant workers.

The Committee had been informed that the Government might now show signs of understanding the gravity of the situation and that it would no longer tolerate the non-respect of Convention No. 87. Copies of draft amendments to the Labour Code to bring it into conformity with the Convention had in effect been forwarded to the Office very recently. However, promises to change existing laws had been given earlier — and not kept. It would be shameful to repeat this exercise again. It was hence the responsibility of this Committee to ensure that the Government brought its law and practice into conformity with the Convention, and thus to ensure the effective protection of the workers' rights to organize, bargain collectively and take part in industrial action.

The Worker member of the United States pointed out that many of the issues raised by the Committee of Experts in its report last year were now before the Conference Committee without any final and satisfactory resolution. The Minister had made tremendous efforts to change things for the better in a short period of time, including putting forward proposals to Congress for changes to the Labour Code which would remedy some of the issues of non-compliance mentioned by the Committee of Experts, under Convention No. 87. However, the Minister was limited by other elements including the Congress, a judiciary with full jurisdiction over labour matters, employers who had adopted anti-union and anti-worker modus operandi and a lack of budgetary resources to underwrite his plans and programmes.

He wished to highlight a few of the examples of non-compliance with Convention No. 87. Referring to the points mentioned in the Committee of Experts' report, he pointed out that although the Labour Ministry had proposed amendments to remedy some of the violations contained therein, they still remained ineffective. Secondly, there was the troubling question of the Guatemalan judiciary. According to reports from representatives of the AFL-CIO Solidarity Centre, many of the eight regional tripartite conciliation and arbitration tribunals, designed to resolve disputes relating to freedom of association, were not operative. Very few cases had reportedly been resolved by these tribunals, which had originally been established to address the problem of over-centralization of the labour justice system in Guatemala City. This situation had denied workers in the countryside access to the courts. Thirdly, the reforms proposed by the Labour Ministry would not resolve violations of Convention No. 87, originating in the criminal justice system and the Penal Code. An example of such a violation could be seen in the Committee of Experts' reference to section 390(2) of the Penal Code, which could be used to impose prison sentences on those engaging in legitimate strike activities. Finally, there was also the problem of impunity for those responsible for committing criminal offences against trade unionists and their families. For example, it was his understanding that the 12 cases of assault, battery, kidnapping, murder, torture and death threats against Guatemalan trade unionists and their families, which occurred between 1994 and 1995 and which were reported to the United States trade representative in January 1996, were still unresolved without conviction or redress.

In conclusion, the ILO should do everything within its powers to ensure that the Minister's plans to bring about genuine compliance with Convention No. 87 in his country prevailed. He called on his own Government, specifically with regard to its projects to assist in the modernization of Central American labour ministries, to actively engage with the Minister and the Guatemalan labour movement, to enhance the enforcement capacity of both the Guatemalan Labour Ministry and the judiciary.

A Worker member of Colombia emphasized that the legislation of Guatemala contained unacceptable obstacles to freedom of association. He hoped that next year the promised new law regarding trade unions would appear and recalled that promises made by previous governments were never fulfilled. It was necessary to respect the rights of trade unions and to guarantee the development of freedom of association. Furthermore, the Government should guarantee that trade union activities would not be criminalized, and it should eliminate the existing situation of impunity. He recalled that a democracy without trade unions was a caricature and that unions should be strengthened in order to avoid the violent conflicts well-known around the world.

A Worker member of Uruguay indicated that it was clear from the reports of the Committee of Experts, the statements by the Worker members, and by a Worker member of Guatemala, that the situation in Guatemala was in violation of Convention No. 87. The Government's intentions in submitting a draft law to Congress were positive, but this case should continue to be monitored and examined again in 2001 if there was no progress. He hoped that the present Minister of Labour would not forget the principles for which he had fought when he was a trade union leader.

The Government representative indicated that he understood that all opinions which had been expressed were intended to be of assistance to Guatemala, but he found it regrettable that these opinions strayed from the observations of the Committee of Experts and touched on criminal acts which were not part of the discussion or on matters related to the application of Convention No. 144. He underlined the intention of the new Government to do what was necessary to move along the processing of the draft law recently submitted to Congress, which, he recalled, had only been in power for four months. With regard to the statement by the Employer member of Guatemala indicating that the Government did not respect tripartism, he recalled that it had been the employers who had abandoned tripartite consultations and had declared that they would not return. Nonetheless, he invited employers to rejoin tripartite discussions and indicated that they would be reconvened in July. With reference to other interventions, he indicated that the enterprise Bandegua and the trade union SITRABI, had arrived at an agreement to rehire 918 dismissed workers, as well as the recent decision by the court of Puerto Barrios to open oral proceedings against 23 persons for criminal acts in relation to the conflict in the banana industry.

The Worker members considered that the arguments that they had put forward one year earlier and which they had referred to were still very topical. They noted the Minister's statement about the bill submitted to Congress even though it had emerged from debate that the social partners had not been consulted. They dared to hope that the policy as announced would be translated at last into action. While waiting for promises to give way to action and for the Committee of Experts to form an opinion, they requested that the Committee should state in the firmest possible terms its concerns about anti-union practices and culture in the country.

The Employer members, referring to the statements made by a few Worker members that the Minister of Labour had been a former trade union activist and that he should therefore not forget his background in performing his work, hoped the Minister would fulfil his duties for the well-being of all people living in Guatemala. The Employer members added that the bill first needed to be examined by the Committee of Experts. In the light of that examination, this Committee could perhaps reach different conclusions. However, in the meantime the Government should provide a detailed report which should be established in consultation with the social partners in conformity with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

The Committee took note of the written and oral information supplied by the Minister of Labour and of the discussion that took place in the Committee. The Committee recalled that the problem of non-compliance of national legislation and practice with the provisions of the Convention had been examined by the Committee of Experts and discussed in this Committee over many years, including the previous year. The Committee took note of the development announced by the Government representative, which had just occurred, that draft legislation to amend the Labour Code, the trade union legislation, the regulation on the right to strike and the

Penal Code, in order to bring them into conformity with the requirements of the Convention, had been sent by the President of the Republic to Congress for adoption on 17 May 2000. The Committee indicated that it would be for the Committee of Experts to examine the compatibility of these amendments with the provisions of the Convention and trusted that these amendments would finally allow the full application of this fundamental Convention, ratified in 1952. The Committee was still concerned by the lack of concrete progress in practice. The Committee expressed its firm hope that the Government would send a detailed report to the Committee of Experts and a copy of the amendments adopted so as to allow it to make an assessment of real progress in law as well as in practice by the following year. It recalled the importance it attached to tripartite consultations with regard to the application of the principles of freedom of association.

Kuwait (ratification: 1961). A Government representative, referring to the Committee of Experts' comments, stated that his country had been a democracy for almost 300 years. Its tenet was equality and social justice and was founded on the principles of Islam. He also noted that the Constitution of Kuwait was based on international Conventions and that Kuwait was therefore committed to complying with its obligations under those instruments. He explained that the delays in drafting the new legislation were due to the fact that it was extremely detailed. The draft text was in fact being studied by various committees, who were examining it in depth in view of the comments received from all groups. The new law would eliminate the requirement that a particular number of workers or employers was needed to form workers' or employers' organizations. This amendment was evidence of the Government's commitment to the principles of Convention No. 87. The Government representative indicated that he had a long list with him of all the changes made in the draft text. While he did not wish to take up the Committee's time by reading out this list, he assured the Committee that the draft text was in accordance with the Committee of Experts' comments. In July 1999, new elections had been held for the Kuwaiti National Assembly following a protracted election campaign. In the interim, Kuwait had benefited from an ILO mission which had provided technical assistance on the provisions in the draft law, including principles established in international Conventions and removing provisions from the draft text that were not in conformity with those Conventions. The draft law would soon be presented to the National Assembly for adoption. The Government representative indicated that Kuwait was proceeding in a transparent manner and believed that his Government's efforts would benefit Kuwaitis, noting that Kuwaiti society enjoyed true democracy, freedom of the press, equality and genuine separation of powers. Kuwait had improved the situation of domestic workers and national legislation and now allowed these workers to form trade unions. This change had been noted by the International Confederation of Free Trade Unions (ICFTU), who had observed that migrant workers in Kuwait had joined unions. In fact, migrant workers constituted one-third of the membership in such trade unions. He explained that migrant workers were twice as numerous as Kuwaitis and asked the Committee to take the unique composition of Kuwait's population into account, pointing to the number of migrants and the diversity of cultures and religions in his country.

The Worker members noted that it was not the first time that the Committee examined the question of the application of Convention No. 87 by Kuwait. It had in fact examined this case on several occasions in the beginning of the 1980s and furthermore in 1992, 1995 and 1996. The long and detailed list of points raised by the Committee of Experts evidenced that freedom of association was subjected to severe restrictions in Kuwait. Additional violations of Convention No. 87 had been established both in law and in practice. Certain issues raised particular concerns: the quantitative requirements to be authorized to establish a trade union or an employers' association and the obligation to have at least 15 Kuwaiti members to form a trade union. This latter requirement had affected several sectors, such as the construction sector, where the major part of the workers were foreigners, making it impossible for them to unionize. They had also mentioned the discrimination against non-national workers who were required to have five years' residence in Kuwait before they could join a trade union. As approximately 80 per cent of the workers were of foreign origin, a large part of these workers were thus deprived of the freedom to associate. The Worker members also referred to the prohibition to establish more than one trade union per establishment or activity, as well as the wide powers of supervision of the authorities over trade union books and registers. These were just some pertinent examples which demonstrated that there was a series of legal provisions in Kuwait which were contrary to the provisions of the Convention. In 1996 the Government had assured the Committee that it intended soon to adopt a draft labour code which would abrogate the provisions which were contrary to the Convention and which contained guarantees for the exercise of freedom of association. In its report to the Committee of Experts, the Government referred to this draft law which thus had not yet been finally adopted. The Committee of Experts had also noted that several provisions of this text continued to be in contradiction with the Convention. This concerned in particular the quantitative requirements for establishing a workers' or employers' trade union and the discrimination based on nationality. In addition, the powers of the authorities both as regards the establishment and the dissolution of these organizations remained too extensive. There was a high risk of interference by the public authorities in the functioning of workers' organizations, as each founding member had to obtain a certificate of good conduct and, as in the event of a dissolution of a trade union, its assets reversed to the Ministry of Social Affairs and Labour. The Worker members shared the hope of the Committee of Experts that this draft law would soon be adopted and promulgated. The Worker members urged the Government, without further delay, to guarantee both in law and in practice to all workers and employers without any distinction, be they nationals or foreigners, and irrespective of their occupation, the entitlement to join the professional organizations of their choice so as to defend their interests. They also requested the Government to submit next year to the Committee of Experts, a detailed report on actual progress accomplished, and not only on the proposed legislative amendments.

The Employer members noted that this case had been before the Committee in the 1980s as well as in 1995 and 1996 with regard to the application of Convention No. 87. There was a long list of discrepancies in the national legislation, including restrictions on the freedom to establish employers' or workers' organizations as well as restrictions on their activities. The Employer members also stressed that whole groups were excluded from coverage under the national legislation and commented on the long residency requirement for foreign workers before they could join a trade union. Noting that Kuwait had a rather monopolistic trade union system, the Employer members also referred to possibilities of interference on the part of the public authorities in trade union activities. The Government representative had indicated that a draft law would be adopted which would eliminate these violations, which was also reflected in the Committee of Experts' comments. While the Government representative had declined to describe the changes made in the draft law to save the Committee's time, the Employer members noted that the text of the draft law would need to be examined by the Committee of Experts in any event and asked the Government representative to list at least one or two of the most important changes in his concluding statements. The Employer members noted that, given the high number of foreigners in the country, it was crucial to solve the problem of the manner in which foreign workers as well as employers could organize. If the Government representative did not wish to list the changes made by the draft text, the Employer members requested that he explain the legislative process and indicate precisely when the new law would be adopted. For the moment, the Employer members adhered to their opinion that the national legislation should be amended in many respects and urged the Government to effect these changes forthwith.

The Employer member of Kuwait referred to the specific composition of the population in Kuwait. As the Employer members had noted, Kuwait had a high proportion of foreigners, who constituted approximately 40 per cent of the population. However, he believed that Kuwait was absolutely convinced of the importance of the Convention, particularly because it was a democratic State that believed in democracy, freedom and equality. He noted that 130 nationalities were represented in the Kuwaiti population and that there were double the number of foreign nationals in comparison to Kuwaiti nationals. The Employer member noted that he had 100 workers in the small enterprise which he operated. Given the broad range of nationalities in his enterprise, he might have had five to ten trade unions in his company. He also pointed out that Kuwait was in the Middle East, with all the difficulties and instabilities that this entailed. If tensions arose, he would face intractable problems as an employer. Kuwait's situation and its unique population were important elements that the Committee should consider. Moreover, the fact that trade union rights were an extension of political rights in the purest sense should also be taken into account.

The Worker member of Greece considered that it was very surprising to hear the Government representative affirming that Kuwait was a country where equality reigned. This amounted to a statement that the Committee of Experts had been wrong. In the course of the discussion, it had been said that the country had had difficulties resulting from the presence of nationals from many different countries. Everyone knew, however, that Kuwait was a very rich country. Although it undoubtedly needed to attract a large number of women and men to work in the country, it was not entitled to depriving them of almost all their rights. It was further also incorrect to assume that a recognition of the freedom of association would entail the establishment of ten unions within the same enter-

prise. Furthermore, such an assertion constituted an acknowledgment of the absence of freedom of association in Kuwait. A country as wealthy as Kuwait had no excuse not to implement the fundamental principles in Convention No. 87. In conclusion, the speaker expressed the hope that, even if this case was not placed in a special paragraph, the Government of Kuwait should be invited to inform the Committee on progress made next year.

The Government representative of Kuwait disagreed with the comments of the Worker member of Greece that foreign workers in Kuwait remained in poor conditions. He characterized these as totally gratuitous allegations and cited the alliance of 31 countries which had helped Kuwait restore its sovereignty as proof that Kuwait was a democratic country that respected freedoms.

Responding to the Employer member's comments, he confirmed that he had a long list of changes to the draft law that took the observation of the Committee of Experts into account. While he was willing to list all the deletions to the national legislation and the innovations introduced by the draft law, he once again stated that he did not wish to take up the Committee's time and promised that his Government would expedite the adoption of the draft law. This would be a priority item for the new Parliament and next year he would be able to confirm that progress had been made to the Committee's satisfaction.

The Worker member of Greece declared to have taken note of the declaration by the Government representative according to which all the undertakings made by him today, would be fulfilled by next year. He reiterated his request that the Government next year provide the Committee with information on actual progress made.

The Worker members recalled that contradictions with Convention No. 87 had been established. They therefore urged the Government to take all necessary measures to ensure that national legislation and practice be brought into conformity with the Convention without any further delay. There were no excuses for a violation of this Convention, which reflected fundamental labour rights. They reiterated their request to the Government to submit next year to the Committee of Experts a detailed report on actual progress both in law and in practice.

The Employer members stated that, in light of the discussion, the Committee was compelled to note once again the considerable discrepancies that existed between Kuwaiti legislation and the provisions of the Convention. As in the past, the Committee must urge the Government to remedy the situation. It should request the Government to report on the adoption of the draft law and supply a copy so that the Committee could determine what changes had been made.

The Committee noted the statement made by the Government representative and the discussion which took place thereafter. It noted with regret that the Committee of Experts had been commenting for many years now on the need for the Government to eliminate the many divergences existing between the legislation and the Convention. In particular, the Committee of Experts had urged the Government to adopt legislation which would grant to all workers and employers, without distinction of any kind, whatever their nationality or their profession, the right to establish the organizations of their choice with a view to defending their occupational interests without undue interference from the public authorities. Noting the Government's previous indication that legislation would be drafted so as to ensure full conformity with the provisions of the Convention, the Committee expressed the firm hope that the Government's report due this year would indicate the concrete measures taken in law and practice as well as specific progress attained in this regard in order to ensure full compliance with the requirements of the Convention.

Swaziland (ratification: 1978). A Government representative indicated that Swaziland was a staunch Member of the ILO. This was evidenced, amongst other things, by the regular payment of its annual contributions and its requests for ILO technical assistance when required. The ILO's response in matters of technical assistance had always been positive and the relationship between the Organization and the member State had gone from strength to strength. It was on this basis that Swaziland had always subscribed and would continue to subscribe to the principles of the ILO, namely democracy and social justice within the framework of tripartism.

Swaziland was fully aware that international labour standards were a vehicle for the attainment of social justice and democracy, which were fundamental in the workplace. Last year, he had addressed this Committee on efforts that had been made and were being made to pass the Industrial Relations Bill, 1998, into law. He was pleased to report that the Bill had since been signed into law. A copy of the Act had just been communicated to the Office. As the Committee might recall, the initial Bill had been elaborated by a tripartite committee. After winning government approval, the draft had been submitted to Parliament. In its wisdom, Parliament had introduced certain amendments, which had been incorporated into the present Act. The Government requested the Office to pass on a copy of the Act to the Committee of Experts for its examination. The Government would welcome comments by the Committee of Experts with a view to taking necessary action to bring the law into conformity with international labour standards. The Conference Committee might recall that the question of an ILO contact mission to Swaziland had been raised last year. The Committee had decided, after the Government representative had elaborated on the Bill's progress, to leave in abeyance the debate on a contact mission until this year, if necessary. In view of the significant progress that had been made to give effect to the Act, debate on the matter would in his view no longer be necessary.

Prominent in last year's discussions in the Conference Committee had been concerns raised by the Committee of Experts relating to certain provisions of the Industrial Relations Act, 1996. The Committee of Experts had commented on the 1973 Decree concerning restrictions on meetings and demonstrations in respect of the right of organizations to hold meetings and peaceful demonstrations. It had also referred to alleged usage of the 1963 Public Order Act to hinder legitimate trade union activities. In reference to the Government representative's submissions of last year on the concerns raised by the Committee of Experts and shared by the Conference Committee, he pointed out that the new Industrial Relations Act addressed those concerns, together with others raised by the Committee of Experts in last year's discussions. The Committee had also referred to the possibility of the Government's organizing independent inquiries into the alleged abduction of the Secretary-General of the Swaziland Federation of Trade Unions and the death of a child during a demonstration. In view of the frequency of similar incidents, the Government submitted that adequate investigations had been carried out into the two cases and into many others. The Government reaffirmed its commitment to fully respect civil liabilities as a fundamental aspect of compliance with Convention No. 87. In conclusion, he gave his assurance that the Government would consider all the comments, observations and recommendations that this Committee might make.

The Employer members, recalling that the case had been discussed frequently by the Committee in recent years, noted that because little progress had been achieved the Committee of Experts had raised the same points as in its previous comments concerning the discrepancies between the national legislation, particularly the 1996 Industrial Relations Act, and the provisions of the Convention. The Committee had been placed in a difficult position with regard to the requests made to the Government in its conclusions over the years, since the Government representative had announced on various occasions that the problems would be resolved in the very near future and that a national committee had been established for this purpose. On this occasion, the Government representative had announced that the Industrial Relations Bill, which had been drafted in 1998, had been signed recently and had come into effect. Nevertheless, the Employer members wished to recall a number of points on which the Committee of Experts had commented. These concerned restrictions regarding the right to organize, limitations relating to the activities of trade unions and the power of the Labour Commissioner to refuse to register a trade union if he or she was satisfied that an already registered organization was sufficiently representative. This latter provision raised the issue of trade union pluralism. Commenting on the requirement that a majority of the workers concerned had to approve a strike before action could be taken, the Employer members emphasized that this constituted an old democratic principle which could not be criticized in itself. Moreover, they noted that the right to strike and provisions related thereto were not covered by Convention No. 87 and that they did not therefore accept the criticism made by the Committee of Experts in this respect.

The Employer members took note of the statement by the Government representative that the Industrial Relations Bill, drafted by a national tripartite committee with the technical assistance of the ILO, had come into force, but that some amendments had been made on the basis of discussions in Parliament. This in itself gave rise to no criticism, as it was the role of parliamentary discussion to amend legislation, where appropriate. The legislation would have to be examined by the Committee of Experts in order to determine whether it had indeed eliminated the discrepancies with the Convention which had existed previously. Referring to the indication by the Government representative that the new legislation had amended the 1973 Decree, which had also been criticized by the Committee of Experts, they called for this issue to be examined by the Committee of Experts when it analysed the new legislation. Finally, the Employer members recalled the difference between industrial action and mass demonstrations organized by workers. Although the latter did not constitute industrial action, according to the traditional definition of the term, the question had been confused on several occasions during the discussion. When examining the new legislation, it was important to ensure that this distinction was made.

The Employer members indicated that the Committee faced a dilemma with regard to its conclusions, since it only knew about the legislation which had been repealed and replaced a few days earlier. This special situation should be reflected in the Committee's conclusions. They called for the new legislation to be transmitted to the ILO so that it could be examined by the Committee of Experts. This would provide a basis for the Conference Committee to review the matter next year, if necessary.

The Worker members thanked the Government representative for the brief information provided to the Committee. They emphasized that it was their strong view that this had been and remained a very serious case of non-compliance with the Convention. They recalled that a direct contacts mission had visited the country in 1996 following the invitation made by the Government during the discussion of the case in the Conference Committee. The mission confirmed the widespread harassment of the country's trade unions. This led the Government to draft a new Industrial Relations Bill with the assistance of the ILO which was consistent with Convention No. 87. However, the Bill had not been enacted as expected. In 1997, the Conference Committee had therefore expressed deep concern over the failure to enact the law and the continuing harassment of trade unions in the country. The Committee had set its conclusions aside in a special paragraph of its report to emphasize its deep concern at the case. A new amended version of the Industrial Relations Bill had been adopted just a few days earlier. But, the lack of progress had compelled the Committee of Experts to express its "deep regret" and to list once again the discrepancies between the 1996 Industrial Relations Act and the provisions of the Convention. The Committee of Experts had identified 13 major discrepancies, including such fundamental issues as the exclusion of certain categories of workers from the right to organize; the imposition by the Government of a prescribed trade union structure and the power of the Labour Commissioner to refuse to register a union; severe limitations on the activities of federations, including an absolute prohibition on a federation or any of its officers from causing or inciting any workplace action; severe restrictions on the right to hold meetings and peaceful demonstrations, and on the right to strike; excessive court powers to limit union activities and to cancel union registration; and an obligation to consult the Government prior to international affiliation. These digressions demonstrated the disdain shown by the Government for many years towards its commitments under Convention No. 87. Not surprisingly, this disdain had resulted in the sometimes brutal and violent harassment of workers and their unions. Vivid accounts of such harassment had been provided to the Committee by Jan Sithole, the Secretary-General of the Swaziland Federation of Trade Unions (SFTU). These had ranged from repeated arrests and detention, to violent threats to his family, being stripped of his clothes and stuffed in a car boot. Until the previous day, Jan Sithole had been unable to be a member of the Committee because his Government had refused to accept him as the Worker delegate of Swaziland, despite the fact that the Executive Board of the SFTU, the largest and most representative trade union organization in the country, had elected him to represent the workers of Swaziland once again at the Conference. This situation had been remedied after it had been brought to the attention of the Credentials Committee. However, it constituted extremely strange behaviour for a Government which was trying to convince the Committee of its sincerity and its commitment to fulfil its responsibilities under the Convention.

According to the ICFTU *Annual Survey of Violations of Trade Union Rights* for the year 2000, harassment of unions continued in the country. For example, in October 1999, the entire National Executive Committee of the Swaziland National Association of Teachers (SNAT) had been arrested five days after it had organized a peaceful demonstration. Two months later, the government-controlled broadcasting and information services had banned the SFTU from broadcasting any announcements or other information unless it had been approved by the police in writing. Moreover, Jan Sithole remained under 24-hour surveillance.

The Worker members noted the statement by the Government representative that new legislation had been enacted by Parliament at the end of 1999, but that the King had refused to give it assent until certain revisions were made. They recalled that this draft legislation had been drawn up with the assistance of the ILO to ensure that it was in compliance with the Convention. However, more information was needed concerning the final revisions of the text. There were reports that a liaison officer would be appointed by the King in every factory to ensure compliance with traditional values. This went hand in hand with a further amendment which set out the requirement to establish works councils in every factory with 25 or more employees, regardless of whether a trade union existed, to be chaired by the liaison officer. The Worker members called for further enlightenment from the Government representative as to the manner in which the works councils would be selected, expressing the concern that they would be selected by their employers. They nevertheless feared that this provision could be seen as a backward step compared with the previous law, which had provided for the establishment of works councils only in cases where there was no union. The amendment therefore created a dual structure at each workplace with equal bargaining rights for each structure, one chosen by the workers themselves and the other chosen by other means.

Another amendment required the holding of a ballot before unions participated in peaceful protests and demonstrations on social and economic issues. The Worker members called for the Government representative to explain how this would work in practice. It was unclear whether the union leadership could participate in or support a peaceful demonstration without submitting the question to a full vote of its membership. They feared that the amendment in fact raised an insurmountable legal barrier preventing unions from participating in any form of national protest. Moreover, it appeared that the new legislation entitled anyone claiming loss because of a strike or protest, even in the event of a legal strike, to introduce a claim in a court of law against the union and against any individual accused of causing the loss. The Worker members added that there had been a lot of violence in Swaziland, much of it directed against the trade unions.

It would appear that the amendments to the new legislation meant that it was not in compliance with the Convention and in a number of respects might not be an improvement over the old law. This undermined the expression of goodwill by the Government representative. This situation was extremely disappointing for the Worker members and no doubt for all the members of the Committee. Many important questions remained to be answered and the new legislation, complete with its amendments, needed to be submitted to the Committee of Experts for examination. In conclusion, the Worker members called for the adoption without delay of new industrial relations legislation which was in conformity with the Convention and for an immediate end to the widespread harassment of trade unions in the country. Until such time as this had been achieved, they believed that the Committee should continue to express, in the strongest terms, its deep concern at the lack of progress made.

The Worker member of Swaziland strongly supported what the Workers' spokesperson had already stated on this issue. All that the Government had said today should be viewed within the context of its determination, or lack of determination, to enact laws in compliance with the international labour standards it had voluntarily ratified; and of whether there was an intention on the part of the Government to comply with these standards both in law and in practice. Since 1996, Swaziland had appeared on several occasions before this Committee, and each year the Government had made resounding positive promises which it had never fulfilled. It should also be recalled that from 1996 to 1999 the Government had been a titular member of the Governing Body, the body entrusted with monitoring, advising and encouraging respect for human dignity and social justice. It should also be noted that the failure by the Government to comply with the provisions of the Conventions it had voluntarily ratified was combined with a series of trade union and human rights violations which included, inter alia: harassment of trade union leaders; arrests of trade union leaders; brutal dispersals of peaceful demonstrations; the shooting and killing of a 16-year-old schoolgirl during a workers' demonstration; unlawful searches of trade union offices, and seizures of trade union documents; and unlawful searches of trade union leaders' homes. This had caused the present Committee to request the sending of a direct contacts mission to Swaziland in order to verify and confirm all the above-listed gross violations. The case of Swaziland had been placed in a special paragraph in 1997. Details of the findings of the direct contacts mission had been reported systematically and accurately in Case No. 1884. Subsequently, in June 1997, Swaziland had requested technical assistance from the ILO to draft legislation in conformity with international labour standards. This assistance had been provided to the Government, which had also promised that it would submit appropriate legislation the following year (1998).

The Tripartite Labour Advisory Board had completed the drafting process in February 1998 and had been promised that the draft would be passed into law before June 1998. He recalled that, before this Committee in 1998, the representative of Swaziland had declared that this could be done prior to the dissolution of Parliament, which was due to occur, but, failing that, the Bill would be passed into law before the end of 1998. The Government had however failed to do this. Instead, the Council of Ministers had passed the Swazi Administration Order of 1998, which legalized forced labour, slavery and exploitation with gross impunity, as detailed in the observation of the Committee of Experts regarding Swaziland's application of Convention No. 29 in this year's report. He also indicated that there had been continued acts of violations of the Convention by the Government, including inter alia: political interference in shop-floor industrial relations issues by the Swazi National Council

and the central Government; obstruction of the collective agreement and bargaining processes; brutal dispersals of peaceful demonstrations, including the use of tear gas and batons; the brutal dispersal of meetings held on private premises; victimization and intimidation of journalists who sought to carry out accurate reporting; and obstruction of official ILO tripartite missions to avoid SFTU participation. This year again, he had been denied the right to represent the workers, but thanks to a decision by the Credentials Committee he could speak as a delegate.

The Government had engaged in the systematic repression of trade unions. In March this year, the Government had ordered the closure of the newspaper *The Observer* and 82 employees had lost their jobs. This closure had been a result of revelations which had not pleased the Government. Furthermore, trade union members had recently been dismissed from the government-owned television station in spite of decisions to reinstate all workers by arbitration authorities. In 1999, the Minister had informed this Committee that before the end of the year appropriate legislation would be enacted. This had not occurred, although both Houses of Parliament had concluded their readings in October 1999. At this stage, the Bill had lost some balance in the negotiating process but, with minor discrepancies, it still largely conformed to the Convention. This Bill had then been subjected to an examination by a non-legislative body with the task of advising the authorities on custom, traditional and cultural issues resulting in amendments which in his view grossly violated the basic fundamental rights of workers. These amendments had been unilaterally imposed without any consultation of the Labour Advisory Board. This in itself constituted a breach of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). In addition, the ILO technical committee which had been placed at the Government's disposal had not been consulted on the amendments at issue. This omission, undoubtedly deliberate, demonstrated beyond any shadow of a doubt that there was no political will on the part of the Government to enact a labour law in conformity with international labour standards. Nor should it be forgotten that employers' and civil servants' organizations had already drawn the Government's attention to the negative effects that the amendments at issue would have on the law if they were adopted. The Government had proceeded, however, to enact the law, including provisions that grossly violated Conventions Nos. 29, 87 and 98, as reflected in the report before this Committee. The amendments at issue included the introduction of:

— A right to claim compensation from the organizers and/or individuals participating in strikes or protest actions, whether legal or illegal, for any loss caused by such strikes or protest actions (section 40, subsection 13, of the new law). This provision was unacceptable and constituted a total denial of the right to strike. In a similar case involving the United Kingdom in 1989, the Committee of Experts had stated: "The right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests as guaranteed by Articles 3, 8 and 10 of the Convention. It also takes the view that restrictions relating to a strike and to the methods used should be sufficiently reasonable as not to result, in practice, in an excessive limitation of the exercise of the right to strike." He recalled that Convention No. 87, Article 8(2), provides that: "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided in this Convention."

— A requirement of a majority vote, by secret ballot, of all the members in favour of the carrying out of a protest action on socio-economic issues as a prerequisite for any such actions. This requirement was tantamount to a total denial of this right. If such action was called by a federation or a confederation, such a vote would be the equivalent, at national level, of calling a national referendum, and this condition alone defeated the spirit of the Convention. It thus constituted a systematic denial of the exercise of the rights it sanctioned.

— Rules allowing for coexistence between works councils and trade unions and the entitlement for the works councils to negotiate terms and conditions of service, wages and the welfare of workers (section 52 of the new law). Furthermore, the same provision stated that the establishment of works councils was compulsory in enterprises employing more than 25 persons. He explained that works councils were not the same as those in Germany. They were employer-driven and could be manipulated by them. Employers were only required to recognize trade unions which represented 50 per cent of the employees. This was a new tactic to accommodate EPZs.

It was surprising that the amendments concerning strike ballots, sympathy strikes and restrictions on peaceful demonstrations had been accepted by the Government although they had already been identified as discrepancies by the Committee of Experts. This demonstrated a deliberate and flagrant disregard for and undermining of the advice given by the ILO technical committee to the Government and a contempt of the highest order for the provisions of the Convention and the ILO Constitution.

He said that as long as Swaziland was ruled by the 1973 Decree, which had removed the Bill of Rights from the independence Constitution, it would continue to have a problem in applying freedom of association in practice. He believed that it was on the basis of this decree that the Government refused to listen to any calls for conformity with the human rights-related Conventions. This arose from the fact that national legislation could not be in conflict with the Constitution. If the Constitution of Swaziland did not sanction the Bill of Rights, all human rights-oriented Conventions would clash with the Swaziland Constitution, since they were still suspended by the above-mentioned Decree. He finally stated that he was convinced that the problem at issue was not a technical but a political problem. Against this background, he declared he had no other choice but to propose that a high-level ILO mission be sent to Swaziland with a view to finding a longer term solution. At the same time, the Government should undertake to address all the defective clauses and amendments within the shortest time possible.

The Employer member of Swaziland welcomed the adoption of the long-awaited legislation in his country which, in his view, vindicated the position which he had taken the previous year that the Swaziland Legislature had the capacity to deliver the law as desired by the parties. In this respect, he considered that the new law covered all the concerns raised by the Committee of Experts. As the Government representative had stated, he hoped that as soon as the Committee of Experts had studied the new law, it would make the necessary comments to assist the tripartite structure in Swaziland to take appropriate action. In particular, he hoped that now that the law had been adopted, the ILO would find it appropriate to provide his country with much needed technical assistance to implement the provisions of the new law and to build the capacity of the new institutions required by the law.

The Employer member of South Africa stated that the divergencies between the 1996 Industrial Relations Act and the Convention had been resolved by the drafting in 1998 of a new Industrial Relations Bill, which had been prepared by a national tripartite committee with the technical assistance of the ILO. The development of the Bill and the agreement to its terms by the social partners constituted significant progress in this case, as noted by the Committee of Experts, which had found that all the previously identified discrepancies in the application of the Convention would be eliminated by the Bill. However, it was a less satisfactory aspect of the case that the significant activities and signs of progress on each occasion appeared to occur only in the week preceding the Conference. While the implementation of the statute constituted progress which should be welcomed, there remained the question of the divergencies between the final form of the legislation and the draft which had been agreed to with the social partners. At the present time, he stated that the Committee was not in a position to reach a substantive assessment of the amendments which had been made to the final version of the legislation or the extent to which they were consistent with the terms of the Convention. He therefore called upon the Government of Swaziland to provide detailed information, as a matter of urgency, on the nature and extent of the amendments and on whether they compromised the progress which had been registered so far. While, in view of the history of the case, a degree of scepticism might be in order, care should be taken not to undermine the progress which had been achieved through any precipitate action which might serve only to raise the levels of social conflict, compromise the prospect of further social dialogue and hinder economic development. The social partners had demonstrated an evident capacity to resolve their differences on issues relating to the obligations deriving from the Convention. It was therefore necessary to exercise a certain degree of patience so that further social dialogue, with assistance from the International Labour Office if necessary, could contribute to the achievement of the desired objectives.

The Worker member of South Africa emphasized that Swaziland was not only a Member of the ILO, but also of the Southern African Development Community (SADC), and had accepted the SADC Social Charter on Fundamental Rights. He expressed a number of concerns with regard to the new legislation enacted earlier in the week. In the first place, the establishment of works councils chaired by a person appointed by the King violated the provisions of Convention No. 87. The appointment of works councils by employers undermined the role of trade unions and the principles of freedom of association and collective bargaining in violation of Convention No. 98 as well as Convention No. 87. Restrictions on freedom of assembly were also maintained in the new legislation. In addition, restrictions had been placed on socio-economic strikes through the imposition of a ballot requirement. The imposition of civil liability for legal strikes was also in violation of the Convention. Moreover, the new legislation served to criminalize the activities of trade unions. He noted in this respect that these amendments

had been inserted by the Swaziland National Council after the adoption of the legislation by Parliament. He called for a high-level ILO delegation to visit the country and engage the Government in the development of new industrial relations legislation, in compliance with Conventions Nos. 87 and 98, in consultation with the social partners.

The Worker member of the United Kingdom focused on the legislation to which the King of Swaziland had given his assent at the beginning of the week. At the heart of the problem lay the extraordinary fact that, at the beginning of the twenty-first century, Swaziland retained the last vestiges of feudalism in the world. This feudalism found other expressions in the country, one of which was the National Council, consisting of hand-picked advisers and elders whose sole mandate was to advise the King on traditional and cultural matters. The amendments incorporated into the final version of the industrial relations legislation had emanated from that Council and placed further severe limitations on the normal exercise of legitimate trade union activities, and particularly on the right to strike and to undertake protest activities, such as demonstrations. He emphasized that section 40(13) of the new Act gave anyone the right to claim that they had suffered loss as a result of a strike. The Committee had had the occasion to discuss similar legislation in his own country in the early 1990s. Section 40(3) required a secret ballot prior to involvement in protest action. Moreover, the ballot had to be conducted by the Labour Advisory Board and not the union. This meant that, even if it wished to organize a national demonstration, and not even a strike, the Swaziland Federation of Trade Unions (SFTU) would have to ballot its entire membership, which was the equivalent of requiring it to hold a national referendum every time it wished to organize a demonstration. In a sectoral dispute, a ballot would have to include not just the union members, but all the workers in the bargaining unit, including non-union members.

He added that subsections 40(1)(b), (3) and (8) set out requirements for periods of notice which had the clear aim of preventing any action. In the first place, 21 working days had to be allowed for mediation by the Labour Advisory Board before the ballot could take place. In this respect, he noted that the Committee on Freedom of Association had considered that the imposition of a system of compulsory arbitration through the labour authority, if a dispute was not settled by other means, could result in a considerable restriction on the right of workers' organizations to organize their activities and might even involve an absolute prohibition of strikes, contrary to the principles of freedom of association. A further seven days' notice was then required before the ballot could take place. He noted in this regard that a national ballot could itself take a considerable amount of time to complete. Finally, another five days' notice had to be given before any action could take place. He therefore calculated that, merely in order to call a demonstration, a minimum period of seven weeks would be required.

Recalling discussions in the Committee in the early 1990s concerning legislation in his own country, he emphasized that the above complexities made it almost impossible for trade union officials to know whether they were acting within the law. The Committee on Freedom of Association had stated that the legal procedures for dealing with a strike should not be so complicated as to make it practically impossible to declare a legal strike. In this case, the restrictions, which also affected the right to demonstrate, amounted to a denial of the right to peaceful protest.

With regard to the amendments to section 52, dealing with works councils and their coexistence with trade unions, he explained that employers were required to set up a works council where there was no union branch in the workplace. Under the previous legislation, when a union applied for recognition, the works council ceased to exist. Under the new legislation, a works council would coexist with the trade union and would have the right to bargain wages and conditions for non-union members. The works councils were funded, chaired and their agenda set by the employer. The Swazi Government had been a member of the Governing Body from 1996 to 1999 and could not plead ignorance of the extensive jurisprudence of the Committee on Freedom of Association regarding "Solidarismo". It was extremely regrettable that the Government of Swaziland should introduce legislation on works councils which perpetuated the paternalistic mould of industrial relations that had prevailed during the darkest hours of Apartheid in South Africa. This was particularly deplorable at a time when elsewhere in southern Africa democratic governments, the trade unions and responsible employers were working hard to replace the destructive and enduring legacy of Apartheid with more modern industrial relations systems based on respect for the independence of the social partners. If Swaziland wished to become a part of the movement towards modernization, a high-level ILO mission, as proposed by the Worker member of Swaziland, might be able to provide important assistance.

The Worker member of Zambia urged the Government to be more responsive to the workers' cries for social justice. Although the Government representative had stated that it was his intention to deliver social justice to the workers of his country, he had been unable to maintain the amendments, proposed by the social partners, to the Industrial Relations Bill. The final version of the legislation threatened to take away what little remained for the workers. The concept of works councils, as set out in the new legislation, was outdated and a sure way of undermining the labour movement. He recalled that Swaziland had not been spared the impact of globalization and that it had no choice but to protect its citizens by providing a basis upon which investors could build and in which workers could be protected. However, the Government had not been able to find the appropriate solution. It had been hoped that the new legislation would address the outstanding issues, but the promised relief had been taken away. Instead of marching forward with the times, the Government had taken a step backwards. It was therefore almost certain that the case would need to be examined by the Conference Committee on future occasions.

The Worker member of Norway, also speaking on behalf of the Worker members of Denmark, Finland, Iceland and Sweden, said that it defied belief that a country which had ratified the Convention as long ago as 1978 could neglect its obligations to such an extent. Despite the courageous fight by Jan Sithole, the Secretary-General of the SFTU, little progress had been made in introducing democratic labour laws in the country. The fact that Jan Sithole had been denied access to the Conference by his Government was the best proof of the grave discrepancies between the provisions of the Convention and national law and practice.

She noted that the long-awaited Industrial Relations Bill had now received the assent of the King. However, the Swaziland National Council had introduced new amendments which were not in compliance with the Convention. The Government of Swaziland was therefore once again ignoring the urgent calls to bring its legislation into line with the Convention. The fact that the Swaziland National Council, the King's advisory body, had interfered in the legislative process and insisted on unacceptable amendments was another example of the country's undemocratic and anachronistic political system. Through the adoption of the legislation, which contained some of the same unacceptable provisions found in the 1996 Industrial Relations Act, Swaziland was showing contempt for the ILO and its supervisory system. At the Conference in 1999, the Government representative had stated that the new Industrial Relations Bill had been drafted by a tripartite committee with ILO assistance and that the discrepancies raised by the Committee of Experts had been eliminated and the Bill brought into compliance with the Convention. In addition to this legislative assistance from the ILO, the country also benefited under an ILO technical cooperation project in the region, funded by Norway, to strengthen tripartite structures. Government officials had pledged to respect tripartism and trade union rights at the meetings and seminars convened. Yet the Government's response consisted of arrogant disregard for the assistance provided. The promises made to the Committee of Experts and to earlier Conference Committees had not been kept, and the agreements entered into had not been implemented.

The Government was undoubtedly fully aware that the amendments adopted were not in compliance with the Convention. Important restrictions on the right of organizations to hold meetings and peaceful demonstrations, the prohibition of sympathy strikes and the organization of strike ballots by the Commissioner of Labour were among the measures introduced by the amendments, and were identical to the provisions criticized by the Committee of Experts as not being in conformity with the Convention. It was probably for this latter reason that they had not been brought before the tripartite structure, namely the Labour Advisory Board, before being included in the new law. After years of discussion, technical assistance and the inclusion of the case on two occasions in a special paragraph of this Committee's report, labour legislation was still not in compliance with the Convention. Other appropriate measures therefore needed to be considered and there could be no doubt that the case once again had to be placed in a special paragraph.

The Government member of the Netherlands, also speaking on behalf of the Government member of Germany, noted that the 1996 Industrial Relations Act had led the Committee of Experts to identify 13 elements which were in conflict with the Convention. This Committee had dealt with the matter on several occasions and had issued urgent calls to the Government for the adoption of the 1998 Industrial Relations Bill. In its latest report, the Committee of Experts had used the phrase "deep regret" at the very slow progress which had been made in the adoption of the Bill. During its examination by Parliament, some minor changes had been made to the Bill. The King's Advisory Council had then examined the Bill and had proposed a number of amendments. In itself, the role of this Advisory Council in relation to the Bill was worth noting. He therefore trusted that the Committee of Experts would look into the role played by this Advisory Council in this respect, as well as analysing the contents of the new legislation and its compliance

with the Convention. It would be necessary to remain very attentive to the case and continue to examine it. Focus should be maintained on the application in practice of the requirements of Convention No. 87 through the new legislation. The visit by a mission, as proposed by the Worker members, might be able to shed further light on the matter. Finally, he emphasized the need for good governance, which also involved the application of fundamental labour standards including Convention No. 87. The relevance of good governance extended far beyond the field of fundamental labour standards, as the Government of Swaziland would doubtless appreciate.

The Government representative thanked the Worker and Employer members for their comments and expressed his appreciation for the technical assistance which had been rendered by the ILO in the preparation of the 1996 Industrial Relations Act. He reiterated that the Government fully supported the ILO Conventions it had ratified. With regard to the discussion, he recalled that the 1998 Industrial Relations Act had been adopted and that it would be appropriate to take this legislation into consideration in the comments of the Committee of Experts. The conformity of the Act with the Convention would require assessment by competent experts and could not be decided on the basis of allegations. He further recalled that the new Act had been approved by the Parliament and King, which was the legislative process in the country. This Act was adopted like others. He indicated that the Government would be prepared to sit down with the Labour Advisory Board to examine, with the assistance of the ILO, the conformity of the amendments with the requirements of the Conventions. He would take appropriate action if legislation was considered to be in violation of Conventions. The revised legislation should then be submitted to the Committee for Experts for examination.

The Employer members observed that the discussion had mostly focused on the newly adopted Industrial Relations Act, the text of which had not been examined by the Committee of Experts. Since it was pointless to discuss a law without having consulted the text, they suggested to follow well-established tradition and to wait for the results of the examination of the new legislation by the Committee of Experts. They once again emphasized that the particularity of this case was that it was based on comments by the Committee of Experts with regard to laws which had been repealed. Turning to the conclusion, they stated that it should include the statement of the Government representative indicating the Government's willingness to submit the new law again to the national tripartite committee in the near future, so that it could examine, with technical assistance from the ILO, whether the new law had indeed eliminated the discrepancies which existed between the old legislation and the provisions of the Convention. If necessary, amendments to the new law would be made. The results of this consultation should be provided in a report for further examination by the Committee of Experts. The Committee could then review this case again on the basis of the most recent information.

The Worker members recalled that they had proposed a high-level ILO mission to Swaziland in order to examine the problems in the application of the Convention. This proposal was an opportunity for the Government to show its good intentions. The fact that the Government was unable to accept this idea would have an impact on the manner in which Swaziland would be regarded in the international community. With regard to the Government's suggestion that the 1998 Industrial Relation Act, as amended, be reviewed by the national tripartite committee, they recalled that the social partners had been consulted for the 1998 draft of the Act, but their suggestions had been subsequently ignored. Therefore, they viewed the Government's proposal with some suspicion, although they encouraged all forms of tripartite consultation. Noting the apparent unwillingness of the Employer members to support the inclusion of the case in a special paragraph, they requested that the conclusion of the Committee express concern that the Government was unwilling to accept the offer of the proposed mission.

The Committee noted the oral statement made by the Government representative and the discussions which took place thereafter. It recalled with deep concern that this case had been discussed by the Committee every year since 1996 and that the Committee had been urging the Government for two years now to take the necessary steps for the adoption of the 1998 Industrial Relations Bill so as to eliminate the serious discrepancies existing between numerous provisions of the 1996 Industrial Relations Act and the Convention. It also recalled the serious discrepancies between the 1973 Decree on the rights of organization and the 1963 Public Order Act and the Convention. The Committee recalled once again in this respect that the Committee of Experts had called for amendments to the 1996 Act in order to ensure, in particular, the right of workers without distinction to establish organizations of their own choosing, as well as the rights of workers' organizations to organize their administration and activities, and to formulate their programmes without interference from the public authorities. The Committee noted the Government's statement that a new Industrial Relations Act had now come into force. It further noted with regret, however, that certain amendments had been made to this text subsequent to the Committee of Experts' examination of the Bill without consultation with the social partners. It stressed that it was for the Committee of Experts to examine the compatibility of this legislation with the legal requirements of the Convention. The Committee noted that the Government had just supplied a copy of the new Act to the Office in order that the Committee of Experts would be able to examine it, with the report due by the Government this year. It expressed the firm hope to be able to note next year concrete progress in the implementation of the Convention both in law and in practice. The Committee reminded the Government that an on-the-spot mission and technical assistance of the International Labour Office were at its disposal to help in solving the problems in the application of the Convention. The Committee noted that the Minister was ready to submit again the amended law to the national tripartite committee to examine, with the assistance of the ILO, in particular the conformity of these amendments with the requirements of the Convention.

Venezuela (ratification: 1982). A Government representative Minister of Labour, recalled that this Committee had invited the Government of Venezuela to speak in respect of the application of this Convention in 1995, 1996, 1997 and 1999. In its 1999 conclusions, this Committee had expressed its firm hope that the Government would supply a detailed report to the Committee of Experts on the concrete measures which had been taken, in legislation and in practice, to ensure in the very near future the conformity of the provisions of the national legislation with Convention No. 87.

The Committee of Experts had taken note that Venezuela was undergoing a politico-electoral situation during the second half of 1998. He brought before the Conference Committee publicly known events which had occurred since the transmission of the Government's report, such as the broad consultation with and discussion in Venezuelan society which, through a referendum on 15 December 1999, had resulted in the approval of the new Magna Carta, establishing in article 23: "treaties, pacts and conventions concerning human rights, signed or ratified by Venezuela, have constitutional hierarchy and prevail in the domestic order to the extent that they contain standards concerning their enjoyment and exercise which are more advantageous to those established in the Constitution and the laws of the Republic, and are of direct and automatic application by the courts and the other bodies of the public authority". This was a direct demonstration of the protection and the guarantees afforded for the exercise of human rights. But there was still more; article 31 of the Bolivarian Constitution provided: "Each person has the right, in the terms established by the treaties, pacts and conventions concerning human rights, signed or ratified by the Republic, to make petitions or complaints to international bodies created to this end, with the aim of requesting protection of his or her human rights. The State will adopt, in conformity with procedures established in this Constitution and in the laws, the necessary measures to comply with the decisions emanating from the international bodies referred to in this article." This Constitution had entered into force on 30 December 1999 and its text would be brought to the attention of the Committee of Experts when the next Government's report was sent.

The Government had created a national Expert Commission which had been entrusted with the complete revision of the labour legislation. This project would culminate in the presentation of the appropriate draft bills in order to facilitate the work of the next National Assembly. This Expert Commission had instructions to take into consideration the suggestions made by the ILO supervisory bodies and to consult immediately with the employers' and workers' organizations, associations, universities and all of the civil society interested in this subject, in order to collect information and opinions. The work of this Commission had just recently begun. After the text had been drafted by the national experts, it would be submitted for consideration and consultation to the abovementioned groups. He hoped that this demonstration of goodwill on the part of the Government would be taken into account by this Committee and would be noted in its conclusions so that the social partners could then launch into the process of reformulation of the labour legislation and could agree to a new Labour Code as quickly as possible. He hoped that the technical assistance of the International Labour Office could also be counted on for this. The legislative provisions under discussion did not originate with the current Government which was in the process of modernizing the legislation.

He stressed that the Government had greatly appreciated the observations made by the ILO and would act so that these comments would be reflected in the text which would be sent to the National Assembly. He requested this Committee to include in the conclusions of the discussion the adoption of the new National Constitution and the electoral process which would soon be concluded and which would result in the election of the new legislative body,

the National Assembly. The Government reiterated its intention to find solutions to the pending legislative questions referred to in the Committee of Experts' observation. He trusted that the other interventions made by members of this Committee would take into account his concrete and objective statement and would avoid going too far beyond the pending issues raised in the Committee of Experts' observation concerning Convention No. 87.

The Worker members recalled that the Committee of Experts had formulated observations on the case of Venezuela for several years and that the Conference Committee already had discussed this case in 1995, 1996, 1997 and 1999. Other aspects of this case pertained to Conventions Nos. 98 and 95. The Committee of Experts had emphasized the need for amendments in order to eliminate contradictions between the legislation and the Convention, in particular as regards the requirement imposed on foreign workers to have more than ten years of residence in order to hold trade union office; the excessively long and detailed list of duties entrusted to and aims to be achieved by workers' and employers' organizations; the requirement to have more than 100 workers in order to form self-employed workers' trade unions; and the requirement to have more than ten employers' organizations in order to form an employers' trade union. Furthermore, several complaints which were pending before the Committee on Freedom of Association, referred to allegations of anti-union reprisals and to interference by the Government in collective bargaining and trade union affairs. According to available information, the Government had not only failed to take the requested measures, but it had also recently enacted several decrees which were likely to violate the principles of freedom of association and free collective bargaining. These decrees concerned, inter alia, the employees of penal institutions which henceforth would be deprived of the right to free collective bargaining. Furthermore, the activities of the trade union leaders had been suspended, the stability of the status of employment had been put in question and henceforth the Government alone would set the conditions of work in this sector. On several points these decrees thus reaffirmed the contradictions that had been noted between national legislation and the Convention. It must thus be concluded that the Government of Venezuela continued in its failure to apply the principles of the Convention. The situation seemed to have remained unchanged even after the changes in Government. The Worker members declared that they felt obliged to request the Government to radically review its attitude and to take measures to bring existing as well as future legislation into conformity with the Convention.

The Employer members noted that the case of Venezuela had been discussed by the Committee four times over a short period. This was in fact the fifth time that the case had been examined and hardly any positive changes had been made. As far back as the observation of the Committee on Freedom of Association in 1990, the Government had been urged to take specific measures to remove legislation which was not in conformity with the provisions of the Convention. Since that time, the Government had done nothing and the Committee had so far heard only unfulfilled promises from the Venezuelan Government. Accordingly, the Committee of Experts once again commented on the same points in its observation: the excessively long residency requirement, the excessively long and detailed list of duties and aims applicable to workers' and employers' organizations and the unduly high number of workers and employers required to establish workers' and employers' organizations. While all these points had already been discussed by the Committee, the Government had again mentioned new measures to be adopted in future. The conclusions of the Committee over the past five years had repeated the same points over and over, reflecting the promises made by the Government, observing with regret the lack of progress and requesting the Government to bring national legislation and practice into conformity with the Convention. Admittedly, this was not a question of life and death, but these matters nevertheless constituted very clear violations of the principle of freedom of association and had been repeatedly discussed since 1992. Therefore, the Employer members considered that the Committee must draw the most urgent attention to the case in its report. Otherwise, it would have to deal with it all over again next year.

The Worker member of Venezuela indicated that, when speaking of Convention No. 87, one also had to speak of Convention No. 98, of the fundamental principles of the ILO and of human rights. Violations of Conventions Nos. 87, 95 and 98 by the Government of Venezuela and, in particular as concerns the rights of workers in the judicial sector, had been referred to in the report of the Committee of Experts. In February 1999, the World Confederation of Labour had objected to the Act concerning judicial power and the Act on the status of judges, approved on 26 and 27 August 1998. The Committee of Experts had requested the Government to send its comments and to amend the corresponding legislation in accordance with the requirements of the Convention. Yet, the situation of workers in the judicial sector had got worse given that the Government had issued a series of standards on 8 March 2000 which had sought to restrain the right to collective bargaining, employment stability and freedom of association. He agreed with the Minister's statement that these violations were not caused by the current Government, but stated that the Government contributed to their aggravation. The March decree had destroyed the right to collective bargaining for oil workers. Another decree had taken the right to collective bargaining away from the workers in the judicial sector, suspending their wages and providing that all dismissals of workers and trade union leaders were justified.

He indicated that, although the Government had declared that it was taking measures to bring the legislation into conformity with the Conventions, in reality it had issued decrees which violated articles 23 and 31 of the Constitution, as well as the rights of workers in the oil and in the judicial sectors, as well as doctors and state workers. One of these decrees had suspended the process of negotiation of a collective agreement for oil workers and the national executive had taken on the power of establishing working conditions in the public administration. Just a few days ago, the National Assembly had approved a new decree which suspended collective bargaining in the Federal District Government, as well as employment stability.

With these decrees, the Government had worsened the implicit denunciations made in the Committee of Experts' comments and had declared war on the trade union movement. He quoted a recent speech made by the Venezuelan President in which he had stated that "there was little time left for the CTV" and again "I am going to destroy the CTV (Venezuelan Confederation of Workers)". The President thought that he had a guillotine to cut off the heads of millions of workers and, moreover, thought that the guillotine had been made for them. Similarly, the deputy Minister of the Interior announced that he would send out the national police if there were any demonstrations. He stressed the constant and repeated anti-union attitude of the Government which resorted to rule by decree and intimidation, ignoring that the destiny of organizations belonged to the workers and not the Government. He indicated that the trade union leaders were not afraid of prison and that the Workers' group and the workers at this Conference had expressed their concern for the seriousness of the situation. He underlined that human rights were at risk and their deterioration had intensified. He requested that this case be included in a special paragraph.

The Worker member of Colombia pointed out, as had just been stated, that freedom of association was essential to democracy. As such, a country which practised aggression towards workers' rights, particularly touching upon Convention No. 87 through laws and decrees in violation of international conventions, as was actually the case in Venezuela, could never pretend to be, or act as if it were, a democracy. The arrogance of dismantling the right to collective bargaining for Venezuelan workers was in practical terms an insult to this Committee, particularly if one took into account that the present Government had promised to respect the rights of workers and their organizations during its electoral campaign. The information provided by the Venezuelan Government representative was not much different from the statements which had been made on previous occasions, without having achieved sufficient progress in practice, nor having provided the guarantees for the full exercise of freedom of association. The Government should be persuaded not to favour the reviving of known and unfortunate practices in Latin America.

The Worker member of France stated that the excessively detailed legislation and numerous limitative conditions imposed for the establishment and functioning of employers' and workers' organizations still constituted actual limitations to the exercise of freedom of association. The case of Venezuela went back several years and this was the fifth time that the present Committee examined this case. The repeated undertakings by the Government to lift the abusive restrictions imposed on the freedom to organize had still not been fulfilled. The electoral fluctuations invoked by the Government representative recurred periodically in all democratic countries and should be welcomed. They could not, however, be raised as a good excuse to postpone the necessary and overdue reform of the Organic Labour Act. The Government representative had referred to the adoption of a new Constitution. Most national constitutions provided however, that international treaties constituted a superior legal standard. The actual problem concerned the implementing legislation and the practice. According to the Government representative, a draft law was to be submitted to the National Assembly, but the procedure could be time-consuming and the outcome was uncertain. At present, Convention No. 87 was still not applied, in particular in the judicial sector. Trade unions and their members should, without interference from the Government, have the right to decide on how to function, to organize freely and to democratically appoint their leaders. According to the Committee of Experts and the Conference Committee, the present Organic Labour Act constituted a serious and longstanding impediment to

the full application of Convention No. 87. It was imperative that the Government really took seriously at last the requests of the Committee of Experts and the present Committee to bring legislation into conformity with the Convention. In order to do so it should take concrete and rapid measures in an area which concerned fundamental rights and which constituted an essential principle of the ILO. As this was a longstanding case, as several promises made in the past had not been fulfilled, and in order to underscore the importance that the Committee gave to a real and rapid change, this case should be placed in a special paragraph. Furthermore, the Government should be invited to carry out substantial changes by next year and to submit a report thereon to the Committee of Experts.

The Worker member of the United States expressed support to the Venezuelan workers and his grave concern at the situation in the country with regard to Convention No. 87. The Committee of Experts' comments pointed out several violations of the Convention relating to the Organic Labour Act, including unreasonable and unfair residency requirements and provisions for holding union office and forming certain union organizations. The speaker also referred to the comments of the World Confederation of Labour (WCL) regarding prohibitions on the right to organize and strike for workers in the judicial sector. While the Government representative had made references to the new Constitution and to the Government's intention to change its law, the situation described remained unremedied. The Committee of Experts had also previously noted the Government's undertaking to bring its national legislation and practice into conformity with the requirements of the international labour Conventions and that the delay in establishing the ad hoc committee for this purpose was due to the politico-electoral situation in Venezuela in the second half of 1998. However, it was precisely the results of this politico-electoral situation and their negative effects on rights established in Conventions Nos. 87 and 98 that had created an urgent situation requiring a quick and decisive response from the Committee. The National Constituent Assembly had considered measures undermining the principles established in these Conventions in early 1999. A number of proposals made in 1999 and still pending called for a restructuring of the trade union system and mandated the participation of non-members in union elections, a requirement which he considered an attack on trade union sovereignty and freedom of association principles. Moreover, collective bargaining rights for workers and their unions in the public and petroleum sectors remained suspended. In conclusion, given the seriousness and urgency of the current situation in Venezuela he joined the Worker member of Venezuela in calling for the inclusion of a special paragraph in this case.

The Worker member of Mexico indicated that the Worker member of Venezuela had clearly explained the serious problems confronting trade union organizations in Venezuela. He indicated that the legislation and constant practice of Venezuela violated the provisions of Conventions Nos. 87 and 98 and that at present it was seeking to violate the right to collective bargaining of workers in the oil and in the judicial sectors, of public employees and of those working in the service of the State. In this context, he supported the request that this case be included in a special paragraph.

The Government representative, referring to the statement that measures had not been taken to introduce changes in Venezuela, indicated that anyone who knew the current situation could confirm that these statements were the product of ignorance or of an agreement to tarnish the image of the Government. It could not be said that change had not occurred in Venezuela when the new authorities had already restricted the political power of the old sectors of the Government which had issued the provisions criticized by the Committee of Experts. A new Constitution had been adopted with a view to redressing the precarious situation of workers. An electoral process for a new legislative body was under way. The political parties which had failed had disappeared at the initiative of the Venezuelan people and this was done within the framework of a peaceful democratic process, without the need to resort to violence. The reform process taking place in Venezuela today was unavoidable. Previous governments could not be compared to the present one. This Government had assumed its functions hardly a year and four months ago and the legislative body charged with drafting new laws had not yet been elected. The people would elect it shortly and this body would repair the errors which had existed for many years. For the Government, it would be easier to govern by decree, but this Government did not act in this manner and preferred democratic changes.

As regards the decrees which had been mentioned by some speakers, he indicated that these affected certain aspects of freedom of association. As regards the judicial power, he explained that the situation in this sector, with insupportable corruption at all levels, could not be ignored. This could not be corrected with light measures. The changes would have removed hundreds of judges from office. These circumstances revealed that important things were happening in Venezuela. When the Legislative Assembly would meet, things would change. As concerns the statements made by the President of the Republic that "there was little time left for the CTV", this concerned announcements about the transformation which would occur in the Venezuelan trade union movement, an accomplice of the old parties, when the labour movement would express itself. Many trade union leaders had been associated with the political parties which had disappeared and many would no longer represent the workers and would be replaced by true trade union leaders, elected by their own workers. Finally, he indicated that these processes would shortly be successful. He regretted that issues which had not been raised in the comments of the supervisory bodies had been raised in the discussion, thus distorting the debate. Concrete complaints should be presented formally so that the Government could send its observations at the appropriate time and not as was done here.

The Employer member of Panama indicated that he had felt that allusions had been made that he was ignorant for being one of the people who had analysed the Organic Labour Act of Venezuela and had prepared the complaint submitted to the Committee on Freedom of Association against the Government of Venezuela for FEDECAMARAS and with the support of the IOE (International Organisation of Employers). He pointed out that the internal politics of Venezuela was a matter for the Venezuelan people. The international obligations of the Venezuelan State with respect to Conventions Nos. 87 and 98 concerned all members of this Committee. The Employers' position was that the obligations acquired by the Venezuelan State should be met and respected as soon as possible in a manner which did not violate the fundamental rights necessary for the existence of employers' and workers' organizations. The complaints presented to the Committee on Freedom of Association for the most part originated in the recommendations which were being considered today. The existence of legislation which regulated with an excessive zeal the life of employers' and workers' organizations and reached the excesses which were being condemned today was lamentable. This attitude should be rectified and the recommendations of the Committee on Freedom of Association should be fully met.

The Employer members had heard only general policy statements from the Government representative, who had once again talked of future elections. While the Committee of Experts' comments made reference to the electoral situation, the Employer members saw no reason for the Government to wait seven or eight years before taking the steps requested by the Committee of Experts. The Government representative had also referred to tripartite consultations. However, this statement had also been made to the Committee in 1998 and the Committee could not determine from the information supplied by the Government representative whether or not these consultations had in fact taken place. The Employer members expressed concern with the practical attitude of the Government, which it considered contrary to the provisions of the Convention. The Government's general attitude with regard to the principle of freedom of association was evidenced by the fact that the Government did not finance delegates to the International Labour Conference in whole or in part. These factors demonstrated that the Government's approach was not consistent with true freedom of association. While the Government should be speaking of autonomy, which consisted of self determination and freedom, this element had been missing from the discussion for years now. Therefore, the Employer members joined the Worker members in requesting a special paragraph in this case.

The Worker members stated that the observations made by the Committee of Experts, as well as the information that had been provided in the course of the discussion in the present Committee, had revealed continued violations by the Government. Contrary to what the Committee of Experts had expected after the recommendations made in the past, the Government had not brought national law and practice into conformity with the requirements of the international labour Conventions. Furthermore, several sources had confirmed that new legislative initiatives had been taken which were contrary to ILO Conventions and in particular Conventions Nos. 87 and 98. The Worker members therefore invited the Government to reassess its attitude and to indicate in its next report what measures it had taken to ensure conformity with the Conventions it had ratified, and in particular Convention No 87. In view of repeated observations and the total absence of follow-up to these observations, they agreed with the Employer members and other speakers in requesting that the conclusions of the Committee be placed in a special paragraph.

The Committee took note of the oral information supplied by the Government representative and of the discussion which took place. Recalling with great concern that, in the past years, the Committee on Freedom of Association had examined several complaints presented by employers' and workers' organizations and that this case had been discussed on a number of occasions by the

present Committee without any positive results, the Committee deplored having to address this question once again. With regard to the serious discrepancies between the national legislation and the requirements of the Convention, the present Committee, in accordance with the Committee of Experts, urged the Government to urgently modify its legislation to ensure that workers and employers were able to set up organizations free from interference from the public authorities and to elect their representatives in full freedom. It also insisted on the need to delete the long and detailed list of duties and aims imposed on workers' and employers' organizations. In addition, the Committee expressed the firm hope that the decrees recently adopted would not impair the rights of workers' and employers' organizations for furthering and defending the interests of their members. It strongly urged the public authorities to refrain from any undue interference which would restrict these rights or impede their lawful exercise. The Committee expressed the firm hope that the next report of the Government to the Committee of Experts would reflect concrete and positive developments and urged the Government to report in detail on all the points raised by the Committee of Experts. The Committee decided that these conclusions would figure in a special paragraph of its report.

Convention No. 95: Protection of Wages, 1949

Ukraine (ratification: 1961). The Government has communicated the following information:

On the instructions of the President and the Cabinet of Ministers of Ukraine, on the basis of information from ministries and other central and local executive bodies and inspections by the State Labour Inspectorate, the Ministry of Labour and Social Policy of Ukraine carried out a study in 1999 on the observance of labour laws, the timely payment of wages and outstanding wage arrears.

I. Wage arrears by sector

The last four months of 1999 saw a steady decline in the level of unpaid wages. On 10 January 2000, for the first time in four years, wage arrears were reduced by 111,200,000 grivnas (1.8 per cent since January 1999). In 1997 and 1998 wage arrears increased by 22.9 per cent and 26.2 per cent respectively. The number of employees whose wages were not paid on time decreased by some 1,500,000 (14 per cent).

As at 10 January 2000 unpaid wage arrears in all branches of the economy amounted to 6,399,500,000 grivnas, of which 35.8 per cent was in the state-owned sector, 63.3 per cent in collectively owned enterprises and 0.6 per cent in enterprises of other types. Since the beginning of the year 2000 wage arrears declined in 19 sectors out of 39, among them education (–41.2 per cent), social security (–39.4 per cent), health (–37 per cent), culture (–37 per cent) and forestry (–31.9 per cent).

The largest increases in wage arrears were registered in banking (+380.6 per cent); information technology (+117.3 per cent); non-productive public services (+80.3 per cent); housing (+52.7 per cent); commerce (+48.9 per cent); and fisheries (+46.2 per cent).

The proportion of unpaid wages to total earnings taking all types of enterprises into account, was 17.1 per cent (21.8 per cent in 1998). In sectors owing wage arrears, unpaid wages accounted for 22.8 per cent (33.6 per cent in 1998).

In the publicly financed sphere wage arrears fell by 337.7 million grivnas (38.5 per cent) since 10 January 1999; accounting for 540.6 million grivnas (8.4 per cent of all wage debt in the country's economy), a decrease of 13.5 per cent since January 1999. Wage arrears in the industrial sector have fallen since January 2000 in 20 out of 41 branches in the sector, notably gas (–88.4 per cent); oil (–46.9 per cent); non-ferrous metallurgy (–46.8 per cent); hydroelectric power (–45.8 per cent), fisheries (–44.9 per cent); and ferrous metallurgy (–29.1 per cent).

The steepest rises in wage arrears in the industrial sector were recorded in micro-biology (+51.1 per cent); flour-milling, cereal and mixed-feed production (+47.1 per cent); in glass and porcelain (+ 37.5 per cent); nuclear power (+34.9 per cent); and in leather, furs and footwear (+33.6 per cent). The proportion of unpaid wages to total earnings for all enterprise types was 16.7 per cent (22.8 per cent in 1998). In enterprises with outstanding wage arrears, unpaid wages accounted for 27 per cent (32.3 per cent in 1999).

In 1999 wage arrears from previous years were settled in the amount of 4,709,400,000 grivnas (72.7 per cent of the debt for the corresponding years).

The figures for January 2000 on most regions and in a broad range of sectors suggest, in comparison with last year's figures, that measures recently undertaken by the Government at national and local levels will continue the positive trends regarding the wage debt.

The driving factor in the wage-debt dynamic was Presidential Decree No. 958/98 of 31 August 1998 "on additional measures for containing artificial increases in wage arrears". The Decree made it possible not only to slow the rate of increase in wage arrears over a period of one and a half years, but also to reduce the wage debt across the board by 92 million grivnas (1.4 per cent). At the same time, average wages have risen by 140 per cent. Wage arrears in the industrial sector, which formed the main object of the Decree, have nearly stabilized.

The chief impediments to the solution of the wage arrears problem are the financial straits of the enterprises, extensive debtor and creditor liabilities and the fact that operations can go on even though materials and labour may not have been paid or other financial obligations met. One of the main reasons for strained finances and the accumulation of wage arrears is, in our submission, the prevalence of unprofitable enterprises. All this makes it more difficult for enterprises to settle wage and mandatory pay-related contributions.

To a degree, articles 33 and 34 of the wage law, which link wages and compensation for unpaid wages to inflation, have also delayed the settlement of wage arrears.

II. Monitoring wage arrears payments

The steady increase in wage arrears has made the monitoring of compliance with labour legislation a high priority. The State Labour Inspectorate of the Ministry of Labour and Social Policy has accordingly focused on breaches of wage legislation, identifying underlying causes of those breaches, preventing further breaches and prosecuting offenders. The Labour Inspectorate is responsible for monitoring compliance with decrees and orders by the President and the Cabinet of Ministers governing the payment of wage arrears, indexation and compensation for late payment of wages. The Ministry of Labour and Social Policy reports to the Cabinet of Ministers on a quarterly basis.

Order No. 19508/2 of 8 August 1999 by the Cabinet of Ministers, which responded to a presidential request of 4 August 1999 was issued in order to ensure the timely payment of wages in state-owned undertakings, to increase the volume of dividends paid on shares held by the State and to terminate the contracts of heads of enterprises who infringe wage laws. Pursuant to that Order, the State Labour Inspectorate investigated (September-December 1999) the payment of wage arrears in joint-stock companies in which the State held shares.

Inspections were made of 1,107 companies. In 934 of them (84.4 per cent) the State lacked a controlling interest and was, therefore, unable to exert a direct influence on the payment of wage arrears. Thanks to the work of the Labour Inspectorate progress was made: arrears in the amount of 43.5 million grivnas were paid, which in some undertakings constitutes full settlement of the wage debt. The conditions of payment of wages and wage arrears to employees of joint-stock companies partially owned by the State were brought to the attention of entities with legal personality that exercise corporate rights.

A particularly acute and complicated situation has emerged during the restructuring of the mining sector, which has seen long delays in the payment of wages, third-party claims, and lump-sum allowances. According to information supplied by the State Statistics Committee wage arrears as of 10 January 1999 amounted to 731.7 million grivnas, approximately 12 per cent of aggregate wage arrears in Ukraine. Measures undertaken by the Government, ministries and other central and local executive authorities late in 1999 made it possible to reduce the increase of wage arrears in the mining sector. Statistical data indicated as of January 2000 a 6 per cent reduction in wage arrears, which came to 687.5 million grivnas. In keeping with resolution No. 1699 of 15 August 1999 by the Cabinet of Ministers the State Labour Inspectorate investigated the payment in kind of wage arrears with food and consumer goods in 69 enterprises in the mining sector. The investigation showed that in a majority of undertakings in the sector the payment in kind of &wages and wage arrears was exceedingly rare. A programme to reform mining sector undertakings and improve their financial position for the year 2000 has been drawn up. The programme was approved by resolution No. 1921 of 19 October 1999 of the Cabinet of Ministers. The programme is broad in scope and seeks inter alia to eliminate tensions associated with wage arrears.

Wage arrears owing to employees in the agricultural sector have an adverse knock-on effect on wages throughout the country. This especially critical situation has arisen with the reorganization of collective agricultural enterprises. The State Labour Inspectorate has carried out a study of compliance with labour legislation in 427 collective agricultural concerns engaged in the reform process. It was expected that employees of reorganized collective enterprises in the agricultural sector would receive land and property in partial settlement of wage arrears. In only 40 per cent of the reformed en-

terprises that were investigated had legal successors been designated. In the remaining 60 per cent the legal problems have yet to be resolved. Forty-three per cent of the undertakings that were investigated (184 enterprises) had failed to reach a final settlement with their employees. As to the employees of reformed collective agricultural undertakings, only one in five had received property in partial payment of wage arrears. To minimize social tensions in the agricultural sector a programme of reform was drawn up which made the designation of a legal successor an essential feature of reforms in order to resolve wage arrears problems.

In 1999 the State Labour Inspectorate monitored compliance with labour law in 29,014 enterprises. This represents an increase of 42 per cent over 1998. Also in 1999 the Inspectorate conducted 15 inspections which paid special attention to the timely payment of wages. The work of the Inspectorate led to 82,200 proposals concerned with the settlement and prevention of breaches of laws. Heads of enterprises, institutions or other bodies which were found to have infringed labour laws were issued 26,000 administrative orders. Penalties were imposed in 1,742 instances for failure to comply with the lawful demands of state labour inspectors. The courts received 2,299 cases of alleged administrative offences, and 1,349 decisions have been rendered calling for administrative penalties. Offending parties were ordered to pay penalties in the amount of 101,000 grivnas.

In accordance with Order No. 141 of 21 August 1998 by the Minister of Labour and Social Policy, the Labour Inspectorate rigorously inspects all enterprises, institutions or other bodies which have accumulated wage arrears. Its efforts have led to the payment of 888.5 million grivnas, which represents 33.2 per cent of outstanding wage arrears. Further evidence of the effectiveness of these inspections is the decrease in wage arrears recorded in 17 regions throughout Ukraine. One in every seven heads of enterprises with wage debts (i.e. 3,399 people), was prosecuted under administrative law, and penalties were imposed in the amount of 255,400 grivnas. Internal enterprise-disciplinary procedures were brought against 153 heads of enterprises.

Pursuant to Presidential Order No. 1-14-1834 of 29 December 1999 the Ministry of Labour and Social Policy and the Ministry of Justice have drafted and submitted to the Supreme Soviet of Ukraine a bill amending the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offences to increase the liability of heads of enterprises for untimely or partial payment of wages. The bill was approved in the first reading.

To foster further measures governing the payment of wage arrears, allowances, pensions, scholarships and other social benefits the Cabinet of Ministers by a resolution entitled "Further measures concerning the payment of social benefit arrears out of budgets at all levels" placed a duty on ministries, other central and local executive authorities and local self-governing bodies to approve and monitor compliance by state and communal enterprises with schedules of wage arrears payments by increments of no less than 10 per cent per month of outstanding wage arrears.

Under the General Agreement for 1999-2000 the Government committed itself to settling all wage arrears owed by state-budgeted entities by the end of 2000.

III. Reform of the State Labour Inspectorate

The current structure of the Labour Inspectorate does not fulfil the requirements of the ILO in respect of the Inspectorate's independence from local executive authorities. For this reason, contrary to the provisions of the General Agreement for 1999-2000 signed by the Cabinet of Ministers of Ukraine, the Confederation of Employers of Ukraine, and the trade unions, it has not been possible to ratify the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

At the same time, massive breaches of labour law, particularly in respect of wages, labour agreements, working time and periods of rest, benefits, guarantees and compensatory payments, call for more vigorous state control.

To this end, the Ministry of Labour and Social Policy of Ukraine has proposed the establishment under its authority of a new governmental body, a Department of State Supervision of Compliance with Labour Legislation, based on the State Labour Inspectorate. By conferring governmental status on the new department, the Government intends to safeguard the legal and social functions associated with so important an institution as the State Labour Inspectorate.

In addition, before the Conference Committee a Government representative, the Minister of Labour and Social Policy, indicated that his Government realized that the problem of wage arrears was an obvious incompatibility with Convention No. 95, which provided for the payment of wages on a regular basis in accordance with the legislation. He explained that the main reasons for that were the difficult economic and financial conditions in the country, due to radical structural transformations, the privatization of state property, as well as radical transformations in the agricultural sector. The process of adaptation to the new conditions of a market economy had turned out to be more lengthy and complex than was initially expected. In such difficult conditions, the President and Government of Ukraine were vigorously pursuing measures to stabilize the economy. Nevertheless the steady growth in gross national product and increase in the industrial output in the second half of last year and earlier this year illustrated that the economy was gradually stabilizing and that the preconditions for a positive social environment were being created. The new Government had drawn up a programme of activities entitled "Reforms in the name of prosperity" which was the only way of creating the conditions necessary to raise the standard of living and overcome poverty.

The Government representative stated that, thanks to the coordinated efforts of his Government, employers and workers had witnessed a steady monthly decrease in wage debt in the country since the second half of last year. On 1 January 2000 and for the first time in four years, wage arrears were brought down by 120 million grivnas. Taking into consideration that wage arrears went up by 23 per cent and 26 per cent respectively in 1997 and 1998, this should be considered as a significant step forward. Moreover, the number of employees whose wages were not paid on time went down by some 1.5 million. The Government representative went on to describe the allocation of wage arrears in various sectors of the economy as of 1 January 2000. State-owned enterprises and institutions accounted for 36 per cent of the total wage debt. Joint-stock companies and collectively owned enterprises accounted for 64 per cent of the total wage debt. The proportion of unpaid wages to total earnings for all types of enterprises was 17 per cent as opposed to 22 per cent in 1998. In the publicly financed sphere, wage arrears had fallen by 337.7 million grivnas (some 40 per cent) since 10 January 1999.

This year there was 100 per cent financing of current wage payments and other social expenditures in the publicly financed sphere. His Government had adopted a resolution entitled "on further measures concerning the payment of social benefit arrears out of budgets at all levels". This resolution instructed ministries, agencies and regional bodies of the Executive to utilize additional non-budgetary sources in order to pay wage arrears of the previous years. This allowed the reduction in wage arrears in the publicly financed sphere to be maintained this year. The comparison of the indicators of this year with those of last year led to the conclusion that the positive trend in the matter of payment of wage arrears would be preserved in the non-budgetary sector. The Presidential Decree "on additional measures for limiting artificial increases in wage arrears" had contributed to this trend to a significant degree. Furthermore, the Government had undertaken measures aimed at reducing contributions depending on the amount of wages. A bill abolishing primary payments to the budget had been drafted and submitted to the Supreme Rada of Ukraine (Parliament). This would allow enterprises to choose their own payment priorities, i.e. timely wage payments ahead of other payments.

With regard to the issue of monitoring wage arrears payments, the State Labour Inspectorate of the Ministry of Labour and Social Policy had focused on breaches of wage legislation, identifying underlying causes of those breaches, preventing further breaches and prosecuting offenders. The Ministry of Labour and Social Policy reported to the Cabinet of Ministers on a quarterly basis in respect of these matters. Pursuant to the Order of the Cabinet of Ministers in 1999, the State Labour Inspectorate investigated the payment of wage arrears in joint-stock companies in which the State held shares. In the majority of joint-stock companies that were inspected, the State lacked a controlling interest. The executive bodies were therefore unable to exert a direct influence on the payment of wage arrears. In the speaker's view, this task could be accomplished more efficiently together with the social partners, primarily the trade unions. Collective agreements were constantly being improved to that end. Thanks to the work of the State Labour Inspectorate, progress could be reported: arrears in the amount of 43.5 million grivnas were paid, which in some undertakings constituted full settlement of the wage debt.

A particularly difficult and acute situation had emerged in the mining sector. Nevertheless, largely due to measures undertaken by the Government late in 1999, it had been possible to reduce wage arrears in the mining sector by 6 per cent. Measures had additionally been undertaken this year to preserve this positive trend. A programme to reform mining sector undertakings and improve their financial position for the year 2000 had been drawn up by the Government. This programme was broad in scope and sought, inter alia, to eliminate tensions associated with wage arrears. Wage arrears owing to employees in the agricultural sector had had an adverse knock-on effect on wages in general. In order to improve conditions in the agricultural sector, the reform of collectively owned agricultural enterprises was currently under way. The State Labour In-

spectorate paid special attention to the observance of labour legislation in collectively owned undertakings.

The law of Ukraine on wages stipulated that wages should be paid in legal tender. The payment of wages in the form of promissory notes, vouchers or in any other form was prohibited. These provisions fully complied with the requirements of Convention No. 95. Regarding the payment of wages in the form of allowances in kind, the law allowed, as an exception, the partial payment of wages in such form in those sectors where such payments were customary or desirable for the employees. In 1999, 13.6 per cent of the total amount of wages was paid in the form of allowances in kind. In the first quarter of 2000, such payments had been significantly reduced, amounting to 7.9 per cent. In 1999, the State Labour Inspectorate had monitored more than 29,000 enterprises. The work of the inspectorate had resulted in 26,000 administrative orders issued to heads of enterprises and institutions where infringements of labour laws were discovered. Penalties were imposed in 1,742 instances for failure to comply with the legitimate demands of state labour inspectors. The courts heard 2,299 cases of alleged administrative offences and 1,349 decisions had been rendered calling for penalties. Offending parties were ordered to pay penalties in the amount of 255,000 grivnas. As a result of the activities of the State Labour Inspectorate, wage arrears were settled in the amount of 885,800,000 grivnas. Finally, the Ministry of Labour and Social Policy and the Ministry of Justice had drafted and submitted to the Supreme Soviet of Ukraine a bill amending the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offences to increase the liability of heads of enterprises for untimely or partial payment of wages. The bill was adopted at the first reading.

In conclusion, the speaker indicated that the process of stabilization was under way and that the final resolution of the problem of wage arrears depended on overcoming the economic crisis. At the same time, his Government counted on further cooperation in this matter with the ILO and its experts.

The Worker members emphasized that non-payment of wages was a worldwide problem that affected millions of workers. It was thus normal that this question was once again on the agenda of this Committee. The implementation of Convention No. 95 by Ukraine had given rise to observations from the Committee of Experts in 1994, 1995, 1996, 1997, 1998 and 1999 and had been discussed by this Committee in 1997. It then observed that, in spite of certain measures adopted, the situation had not improved. The failure to implement the Convention by Ukraine revealed a contradiction between national legislation and practice. If the comments of the Committee of Experts focused on the implementation of Article 12, paragraph 1, supplementary information was also requested regarding: prohibition on the payment of wages in the form of vouchers or coupons; regulations on payment of wages in kind; the rank of the employee as a privileged creditor for wages due in cases of bankruptcy; and the sanctions imposed for violations. The Committee of Experts had also emphasized the need to adopt efficient measures to ensure supervision, and effective application of sanctions, as well as reparations. In this respect it must be noted that the situation had not improved but rather it had worsened. The Government's reply to observations of the Committee of Experts gave a contrasted picture of the changes in salary arrears. Consequently, the information provided did not provide a clear and accurate picture as to the extent of these arrears. The high amount of these arrears was both clear and alarming. In this regard, the results of a study carried out by the ILO in 1999 on industrial enterprises in Ukraine which employed more than 500,000 workers was just as alarming: 80 per cent of the factories admitted having great difficulty in paying wages, four out of five had not paid the full contractual amount, and on average these firms had arrears in excess of 20 weeks. The rapid regularization of the situation, promised by the Government during the previous discussion, did not take place in practice. Moreover, it was to be noted with concern that only very modest sanctions had been handed down against persons responsible for these arrears. The fines imposed were not commensurate with the extent of these arrears and most often were not even paid. The Government admitted that the tribunals which examined violations tended to minimize the responsibility of the guilty parties. It was impossible to fight efficiently against these practices without a genuine will to sanction those who were responsible.

The Worker members shared the concerns expressed by the Government regarding the State Labour Inspectorate. It must take all necessary measures to strengthen the independence and efficiency of this inspectorate, which played a pivotal role in solving this problem.

In conclusion, it appeared that the detailed criteria of the Committee of Experts concerning the implementation of the Convention: efficient supervision, appropriate penalties, and reparation, were not translated into practice. Under these circumstances, recourse to technical assistance from the Office would again appear to be appropriate.

The Employer members noted the statement of the Government representative acknowledging that there was a clear violation of the Convention by Ukraine. The Government representative had further recalled the reasons which had given rise to this deplorable situation and had enumerated the political objectives of his Government in order to resolve the problems encountered. Taking due note of the statement, the Employer members observed from previous discussions in this Committee that it was not only Ukraine but also many other countries, undergoing the transitional period from a centrally planned economy to a market economy, that were facing the same problems.

As regards the written information provided by the Government, they noted that the problem of wage arrears was only mentioned in respect of state-owned enterprises and collectively owned enterprises. It was their view therefore, that no private enterprises existed in Ukraine or that such enterprises had no arrears in wage payments. The Employer members noted measures taken by the Government, including the supervision of wage arrears payments, in order to resolve the problem. These measures apparently had led to a partial payment of wages. They further noted that under the terms of the General Agreement for 1999-2000 concluded between the Cabinet of Ministers, the Confederation of Employers and the trade unions, wage arrears should be paid off by the end of 2000 in state-owned enterprises. The Employer members doubted however, that the problem of wage arrears could be solved in the near future. This problem was closely related to the establishment of a functioning market economy. For this purpose, framework regulations were needed such as provisions providing for workers' entitlement to the enforcement of the court decision concerning the payment of his or her wages which would be immediately executory by means of the granting of a provisional injunction. Another important legal aspect concerned the readiness of employers to pay the wages on time. The Employer members recalled the legal situation in other democratic States where the non-payment of wages was considered as fraud under the Penal Code if the employer employed a worker knowing in advance that the latter's wage would not be paid. This aspect was important and needed to be incorporated in the legal framework to be established. Nevertheless, the problem could not be solved merely by adopting legal provisions or by establishing statistics illustrating the problem but rather in creating sound economic and legal conditions in a country in order to enable it to establish a stable and transparent market economy. In order to achieve this objective, the ongoing existing elements of a centrally planned economy had to be relinquished quickly.

In conclusion, the Employer members emphasized the problem could not be solved by issuing a large number of decrees and regulations but by establishing a legal framework which was oriented towards enabling the country to establish a viable market economy. The Government should of course report on the measures taken in this respect.

The Worker member of Ukraine stated that the reasons for the ongoing non-payment of wages was mainly due to unresolved economic problems and non-efficient industries. As a result, wage arrears, all in all, were not falling but continuing to increase. As of today, they exceeded 6.4 billion grivnas. Today the average wage debt per worker was 726 grivnas, hence each worker in average had not received more than three months of wages. Fifty per cent of persons working in the agricultural, construction or industrial sector had not been paid or had been partially paid for six months or more. The longest terms of delay in the payment of wages (three years or more) were to be found in agricultural enterprises. However, the largest amount of wage debt per employee was to be found in the mining, metallurgy and construction industries.

He pointed out that the Federation of the Trade Unions of Ukraine had repeatedly submitted its proposals to the Government aimed at the stabilization and development of national industry; redirection of credit and investment policy of the State towards long-term capital investments in those enterprises that were competitive and had good prospects; conduct of efficient structural policies; increase in efficiency of privatization and management of state property; improvement in tax collection; and strengthening of state control over the observance of labour legislation. These measures would permit the radical resolution of the wage arrears problem. The speaker, who himself was a Member of Parliament, had introduced a bill aimed at increasing the criminal liability of those responsible for untimely or non-payment of wages. Moreover, the Federation of Trade Unions of Ukraine supported the individual claims of workers before the courts for recovery of wage arrears and represented their interests in courts. For example, in 1999 more than 243,000 individual claims of workers for payment of wages had been brought to the courts which rendered decisions on the payment of around 310 million grivnas. However, in practice, judgements were not enforced promptly due to the lack of resources of the enterprises and the ineffectiveness of the executive authority to enforce court decisions.

Furthermore, at the insistence of the trade unions of Ukraine, the Government and the employers of Ukraine committed themselves to pay wage debts and strengthen enforcement of the payment of wages in the General Agreement for 1999-2000. Finally, the trade unions of Ukraine had repeatedly carried out nationwide protests to ensure the prompt payment of wages. However, these efforts were not sufficient, and it was for this reason that the Federation of Trade Unions of Ukraine had again submitted a representation to the ILO. The speaker pointed out that the mere fact that this Committee was discussing this problem had obliged the Government to look more actively for a positive resolution thereto. Hence, two weeks ago, the President of Ukraine, speaking to a congress of enterprises, had said that the fact that Ukraine was not observing its obligations to workers and that it had to explain its position twice in three years to the Committee was a scandal and had urged employers to ensure prompt wage payments. Moreover, pursuant to the meeting of the heads of the Tripartite Commission with the Prime Minister of Ukraine, an agreement was reached that wage arrears would be paid by the end of 2000. The speaker trusted that this would be achieved.

The Worker member of Denmark, speaking on behalf of Nordic workers, supported what had been stated by the Worker members as well as the Worker member of Ukraine. It was sad to read in the Committee of Experts' report that the problem of wage arrears was increasing, especially since almost 50 per cent of workers were affected by this problem. In this context, one would have expected the Government to deal with the issue very seriously. This appears not to have been the case. The efforts undertaken by the Executive were proven to be ineffective. It was further mentioned in the Committee of Experts' report that the level of fines was very low and imposed only on a few persons responsible. It was also mentioned that the courts, when examining violations of labour legislations tend to tone down the culpability of those responsible because of the difficult financial situation and to often make inappropriate decisions in view of the social tensions caused by such violations.

This Committee had received further written information from the Government. According to this information, in the last four months of 1999, there should have been a steady decline in the level of unpaid wages. On the other hand, the Government stated that inspections were carried out in 1,107 companies. Unfortunately, the State lacked a controlling interest in many of these companies and was unable to exert a direct influence on the payment of wage arrears. Moreover, an ILO press release dated 25 April 2000 contained information on the first results of a major survey of industrial enterprises in Ukraine covering over half a million workers. The survey which was carried out in 1999 covered a representative national sample of 690 firms employing 583,679 workers and found that over 80 per cent of all factories reported that they had great difficulty in paying their wages. With this information, it was quite understandable that the Committee of Experts urged the Government of Ukraine to continue its efforts to take all possible measures to improve the present situation. This should be reflected in the Conference Committee's conclusions.

The Worker member of Japan pointed out that, despite the explanations given by the Government representative, the situation of Ukrainian workers had actually deteriorated. The average wage of a Ukrainian worker was US$36 per month which meant that most of the Ukrainian population was living below the poverty line. Furthermore, the average wage of public sector workers was much less than in other sectors of the economy. For example, the wage for nurses was US$15 per month and that for doctors was US$20-25 per month. Although the Government representative had indicated that average wages had risen by 140 per cent, prices had increased at a much higher rate. Finally, although the Government had promised to settle all wage arrears owed by state-owned entities by the end of 2000, this Committee should not forget the same promise was made by the Ukrainian Government three years ago to settle all wage arrears by the end of 1997. He urged the Committee to request the Government to send any information illustrating that it had fulfilled its obligations in line with the Convention by next year.

The Employer member of Ukraine fully understood that Ukraine was responsible for arrears in wage payments and that employers should ensure the prompt payment of wages. He pointed out, nevertheless, that this phenomenon was due to the prevailing economic situation in the country. To improve the situation, the Government would have to undertake fundamental reforms in the field of investment as well as in the credit and banking sectors. He underlined, however, that the new Government understood that the problem had not been resolved due to the absence of a proper market economy. Moreover, there was, for the first time, a general agreement between the Government, workers and employers that proper support needed to be given to the manufacturing industry. Additionally, the President of Ukraine had stated that the budget for 2001 would be based on a new tax code. Finally, the Parliament had examined a bill on employers' organizations this year which, if adopted, would increase criminal liability of employers for the non-payment of wages. Hence the speaker believed that the problem of non-payment of wages or wage arrears would eventually be resolved. He pointed out, nevertheless, that this problem was not only the responsibility of employers but also of trade unions which had signed collective agreements which covered about 70 per cent of all enterprises.

The Worker member of the Russian Federation stated that a year ago, this Committee had examined a similar case concerning the Russian Federation. Having listened to the Government representative and other speakers, he had some doubts as to whether the combination of all the measures taken and promised by the Government could resolve the tragic situation in the country. In fact, this problem of wage debt was being encountered in a number of countries which were undergoing a transitional period from a centrally planned to a market economy and was not being resolved due to the absence of properly coordinated measures. In the report of the Committee of Experts for example, there was a list of 12 countries where the wage debt was a very serious problem in 1999. This problem was aggravated by a lack of action on the part of the authorities concerned. Hence, although the Government referred to problems pertaining to the state budget to explain the current situation, in fact it was simply a question of the Government facing up to its responsibilities and realizing that it had entered into a contract with the workers concerned. This was also true of employers in the case of private undertakings. The Government should be called upon to take urgent measures to remedy this disastrous situation. The Ukranian Government should take strict measures against companies whose tax debt to the State is comparable to the whole amount of unpaid wages in the public sector. Attention should also be paid to so-called virtual companies registered in off-shore zones, which every year transferred sums equivalent to a year's unpaid wages. He was surprised to hear the suggestion of the Employer member of Ukraine that unions should share the responsibility of wage arrears because they signed collective agreements.

The Worker member of Zimbabwe asserted that the problem of wage arrears was very serious and not at all fair for workers. More than 50 per cent of workers were affected by this problem in Ukraine and the average worker had not received more than three months of wages. Moreover, it appeared that the problem of wage arrears was continuing to increase. As a result, the Government should be urged to take the appropriate measures rapidly.

The Government representative indicated that his Government would take all possible measures to improve as quickly as possible the situation concerning the payment of wages to all employees and avoidance of any wage arrears in the future so that the requirements of Convention No. 95 were fully met. Despite the difficult economic situation in the country, his Government intended to decrease wage debt to an absolute minimum. However, 65 per cent of the wage debt was to be found in the private sector. His Government was trying to seek a solution to this problem in consultation with the social partners. Finally, his Government intended to step up the enforcement powers of the State Labour Inspectorate and to increase the criminal liability of those responsible for non-payment of wages. The speaker assured the Committee of his Government's intention to resolve the problem and believed the discussion in the Committee would have a direct impact on government action in the future.

The Worker members noted the seriousness and persistence of Ukraine's failure to comply with Convention No. 95. It was plain from the statements by the Worker member of Ukraine that between 8 and 9 million workers were affected by the problem of salary arrears and that those arrears could be measured in years. Steps already taken would have to be evaluated by the social partners with a view to reinforcing them and ensuring that they were effective, thus guaranteeing that the Convention was duly implemented. The Government should, as the Committee of Experts requested, provide detailed information on action taken to remedy the situation and on the results achieved. The dialogue with the Committee of Experts on various matters of legislation should be pursued. The Government should also provide information on its commitment to settle all salary arrears in the public sector by the end of 2000. Lastly, the Worker members considered that technical assistance from the Office should effectively serve to improve the situation. That assistance, which had been requested by the Government, should form the subject of an express programming decision.

The Employer members indicated that this issue had been examined and discussed extensively. With regard to the statement by the Government representative concerning the difficult budgetary situation of the State, they pointed out that this only affected state-owned enterprises. Hence, more state-owned enterprises needed to be privatized since it was not incumbent upon any government to assume responsibility for paying private debts. This solution would then improve the budgetary situation of the Government. They further welcomed the view of the Employer member of Ukraine who

had advocated the implementation of a fair and transparent tax system. This was an important element to be taken into consideration in the legal framework which needed to be established in the country. While agreeing that the responsibility for non-payment of wages lay with the employer, they pointed out that the establishment of such a system of liability would only constitute a short-term emergency measure which would not resolve the root cause of the wage debt problem. In order to resolve the problem, the Government needed to take overall measures in order to establish a certain legal and socio-economic order in the country and not just take measures with a view to resolving a very specific problem. Hence, it was important not to overlook the very central issue, i.e. the context in which the problem originated which was the lack of a functioning market economy.

The Committee took note of the written and oral information given by the Minister of Labour and Social Policy and the subsequent discussion which took place. Noting the information regarding the volume of outstanding wage arrears, the Committee expressed its deep concern about the continuous violation of the Convention and the serious situation experienced by millions of workers in Ukraine. According to the information provided by the Minister, the number of workers whose wages were not paid on time had decreased; however, the figures revealed that, whereas in certain sectors there had been some improvement, in others the situation had become even worse. The Committee considered that, even though the adoption of legislative texts contributed to resolving the problem of wage arrears, there were structural problems, in particular the poor economic structure and financial conditions, and the generalized debts of enterprises, for which the Government had to resort to other types of measures. Furthermore, the Committee stressed that the role of labour inspection, as the Government itself recognized, was critical for handling this serious matter. The Committee insisted therefore, that the Government pursue actively its efforts with a view to implementing the reforms in respect of labour inspection. The Committee urged the Government to continue, with the assistance of the Office, to adopt effective measures to ensure the application of the Convention, not only for the regular payment of wages, but also for the prohibition of payment in the form of promissory notes, coupons or allowances in kind and the treatment of workers as privileged creditors in the event of bankruptcy, as well as effective penalties for any violation thereof. The Committee requested the Government to submit a detailed report for this year's meeting of the Committee of Experts, providing information concerning any measures taken on all the issues raised, including the labour inspection reforms. The Committee asked the Government to communicate detailed statistical data allowing the exact effect of all the measures taken to be evaluated.

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

Australia (ratification: 1973). A Government representative stated that the Government was surprised that this Committee, given its charter to examine the more serious matters raised by the Committee of Experts, sought to examine observations raised by the Committee of Experts on his Government's application of Convention No. 98. In his Government's view, the observations of the Committee of Experts went to technical issues regarding the interpretation of national legislation. To enable this Committee to consider these technical matters, he wished to provide some background to Australia's somewhat unique labour laws.

For nearly 100 years, Australia had had a system of conciliation and arbitration which, while compulsory, was intended to, and had in practice, maintained a substantial element of collective bargaining both within and outside the formal systems established by legislation. Traditionally, collective bargaining took a number of forms:

— Pure collective bargaining without recourse to federal or state industrial tribunals. This was formerly quite common in remote locations but the advent of rapid travel and communications had led to its decline.

— Enforceable awards of industrial tribunals made "by consent", where the parties entered into negotiations and reached agreement on matters in dispute between them and had presented the resultant agreement to the tribunal to be formalized as an award.

— Awards of industrial tribunals made by arbitration and covering any matters not already agreed upon by the parties. The resultant award would be characterized as the product of arbitration but was, in a very real sense, the product of a process of collective bargaining.

— The negotiation of "over-award" terms and conditions. It had never been permissible to derogate by common law agreement from award standards set by consent or arbitration, but it had always been permissible to treat those standards as minima and negotiate to improve upon them (this had been and remained a common feature of Australia's industrial relations).

The ILO's supervisory bodies had never found these historical aspects of Australia's system of industrial relations to be in breach of the Conventions concerning freedom of association and collective bargaining in any fundamental way. New federal laws had been introduced from the beginning of 1997 by way of the Workplace Relations Act. In 1997, in its report on Australia, the Committee of Experts stated "that it is obvious that the impact of legislation will not be fully clear for several years. The role of the Industrial Relations Commission will be crucial in this development. It is important that such natural evolution be carefully monitored to ensure that the spirit of the Convention is maintained. The Committee would welcome regular reports on future developments". The Government had provided such reports, explaining fully the operation of the system. The observations brought to the attention of this Committee relied on the Committee of Experts' interpretation and not that of the courts. Unfortunately, these observations substantially ignored the material provided by the Government and, in a number of respects, the interpretations drawn were clearly wrong or not sustainable. In taking such a strong position, the Government representative drew the Committee's attention to two of the matters raised by the Committee of Experts in its observations, by way of example.

Firstly, in its observation, the Committee of Experts recommended that the Government take measures to amend section 170CK of the Workplace Relations Act to ensure that remedies under this section were available to all employees. The observation was based on the premise that section 170CK offered broader protections than part XV of the Workplace Relations Act. Although the Committee had noted the Government's point that persons excluded from a remedy under section 170CK of the Workplace Relations Act could obtain a remedy under part XVA, its suggestion that the protections available under part XVA were fewer than those contained in section 170CK of the Workplace Relations Act was fundamentally wrong. While the explanation was technical in nature, it was necessary to go into some detail for this Committee's consideration. Section 170CK of the Workplace Relations Act applied only where a worker's employment had been terminated at the initiative of his or her employer. The only remedies that the Federal Court could provide to a worker were reinstatement and compensation, and any other orders that the court thought necessary to remedy the effect of the termination. Section 170CK did not apply to workers who were not in an employment relationship — that was, independent contractors. In contrast, part XVA provided protections to a broader group of people. As well as offering protections to employees, part XV also offered protections to workers who were not in an employment relationship. Unlike section 170CK, part XVA applied to a far broader range of conduct and situations concerning freedom of association and victimization in employment generally. Part XVA applied to actual, as well as threatened, conduct. For example, part XVA prohibited an employer or a principal from acting prejudicially towards an employee or independent contractor (or threatening to do so) because that employee or independent contractor was a member of a union. Part XVA also safeguarded the right of a worker to join a union of his or her choice. Its provisions prohibited an employer or principal, or another union, from acting prejudicially towards an employee or independent contractor, merely because that employee or independent contractor was a member of another union. Part XVA also offered protection for those employees who wished to bargain collectively, and this had been demonstrated in the interpretation of part XV by the Australian courts.

The second issue that the Government representative wanted to cover concerned Article 4 of Convention No. 98. The Committee had reiterated its view that the Workplace Relations Act gave primacy to individual over collective relations through the procedures for Australian Workplace Agreements (AWAs). AWAs were agreements made between employers and individual employees. His Government reiterated its view that the provisions concerning AWAs must be considered in the context of the Australian industrial relations system as a whole and when that was done the provisions in question would be seen to comply with the Convention. The speaker noted that the Committee of Experts did not say the Act was discouraging or inhibiting collective bargaining. Rather, it said that the Act did *not promote* collective bargaining. This was because of the view the Committee of Experts took of the provisions concerning AWAs. His Government noted, however, that the Act continued to provide for collective bargaining as well as for AWAs. The Act, and its predecessor, had always provided for collective bargaining. The result of that collective bargaining had been either an award made by the Australian Industrial Relations Commission or an agreement approved by the Commission. In his Government's view, the provisions concerning individual agreements did not de-

tract from those provisions of the Act which had previously been accepted as complying with the Convention. It was true that the Act now provided additional machinery to facilitate individual bargaining as an alternative to collective bargaining where that was what the parties wanted. His Government believed that, having regard to national conditions in Australia, this was consistent with Article 4 of the Convention.

In this regard, his Government noted that Article 4 did not impose an unqualified obligation to promote collective bargaining. 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*. His Government drew attention to the following features of the Australian industrial relations system:

— at the federal level, Australia had a formal industrial relations system for almost a century and at the state level for longer than that;

— participation in the formal system was voluntary: workers, employers and their representative organizations were free to negotiate and make agreements outside the formal system;

— the formal system had and continued to be, based on collective bargaining and, AWAs must be underpinned by awards. The ILO had accepted for many years that awards were instruments made through a process of collective bargaining;

— in the terms of Article 4, the system continued to provide machinery for the negotiation of collective agreements while also providing for individual bargaining for those who did not wish to bargain collectively;

— there were penalties for coercing a person to enter into an AWA;

— collective bargaining remained the norm in Australia — almost 2 million employees were covered by collective agreements made under the Act, compared with approximately 90,000 employees covered by AWAs;

— if the number of employees covered by awards was taken into account, then some 6 million Australian workers were covered by arrangements made by collective bargaining compared with 90,000 covered by individual agreements;

— Australia had mature, sophisticated and well-resourced trade unions and employer organizations able to inform members of their rights and obligations and to represent their members in collective bargaining or individual bargaining with equal facility;

— an employee who chose to bargain individually could arrange to be represented by a trade union during negotiations.

Against that background, his Government maintained that, in the language of Article 4, national conditions in Australia meant that the current legislation was consistent with the Article. His Government found support for that view in the preparatory work for Convention No. 98. The text of Article 4 which emerged from the first discussion, referred to measures to "induce" the social partners to engage in collective bargaining. During the second discussion, the word "induce" was replaced by the words "encourage and promote" which had a somewhat different connotation. It was clear that in adopting those words, the text of Article 4 substantially followed a draft proposed by the Government member of the United Kingdom during the second discussion of Article 4. The preparatory work contained the statement of the representative of the Government of the United Kingdom who stated that "the object of this Article should be to lay down the obligation to encourage the progressive development of collective bargaining, having regard to the actual conditions of the country in question". He suggested a change of terminology which seemed to him more appropriate to the object in view. He therefore proposed, as a sub-amendment, the following draft of Article 4: "Measures shall be taken as appropriate and necessary to encourage and promote the progressive development of negotiation between employers and employers' organisations on the one hand, and workers' organisations on the other, with a view to the regulation of terms and conditions of employment by means of collective agreements." The representative of the United Kingdom had referred to "the actual conditions of the country in question". The actual conditions in Australia made it unnecessary to continue to promote and encourage collective bargaining. As explained earlier, the reasons for this were presented earlier by the speaker.

The Committee of Experts stated that the Workplace Relations Act gave primacy to individual over collective relations. That was true only to a very limited extent and, in any case, was largely a matter over which the parties had control. An AWA would prevail over a collective agreement only where either: the collective agreement expressly permitted the AWA to prevail; or the collective agreement was made while an AWA was still in operation and had not passed its specified expiry date; or the AWA was made after the collective agreement had passed its specified expiry date. In all other circumstances, the collective agreement would prevail; that was: a collective agreement would prevail over an AWA made during the life of the agreement, and which was inconsistent with the agreement, unless the agreement expressly permitted an inconsistent AWA to prevail; or a new collective agreement would prevail over an existing AWA that had passed its specified expiry date.

Those provisions, in effect, gave the parties control over whether an AWA would prevail over a collective agreement or vice versa. In his Government's view, they could not be said to give individual agreements primacy over collective agreements except where that was the wish of the parties.

It should also be noted that AWAs were subject to the so-called "no disadvantage test". This meant that an AWA must be tested against an award or other law of the Commonwealth or a state that was relevant to the employment of the worker to be covered by the AWA. With some specified exceptions, the AWA must not result in a reduction in the overall terms and conditions of employment of the employee as provided for in the relevant award or other instrument.

In summary, under the Workplace Relations Act:

— collective bargaining was provided for;

— collective bargaining continued to be the norm in Australia;

— a substantial majority of Australian workers were covered by collective agreements;

— a worker negotiating an individual agreement might be represented by a trade union;

— as a general rule, an individual agreement could not disadvantage a worker by reducing the terms and conditions of employment that workers would otherwise be entitled to.

In those circumstances, his Government believed that the provisions of the Act concerning individual agreements were consistent with Article 4 of the Convention. As the speaker had stated earlier, these and other matters raised in the observations of the Committee of Experts were technical in nature, their understanding requiring a clear knowledge of Australia's unique industrial arrangements. His Government agreed with the 1997 observation of the Committee of Experts that the "natural evolution" of Australian laws be monitored. In that regard, the Government would continue to report on all relevant Conventions. It did record, however, that it was disappointed that such dialogue to date had been through the publishing of observations rather than the alternative, and in his Government's view, more appropriate, direct request approach.

The Worker members indicated generally that Convention No. 98 was not about tolerating collective bargaining but promoting it. In 1998, some members of this Committee had criticized the Committee of Experts for having made its observations too quickly without having all the relevant information and in particular, the observations of the Government. Two years later, in addition to the comments of the Australian Chamber of Trade Unions (ACTU), the Australian Chamber of Commerce and the Government's detailed observations, the Committee of Experts had made its comments based on the detailed discussion that took place in this Committee two years ago, the decisions of the Australian Industrial Relations Commission and the Federal Court of Australia, the further comments of the ACTU and the Government's reply thereto. Finally, the tripartite Committee on Freedom of Association had issued relevant conclusions and recommendations (Case No. 1963) at its March 2000 meeting (320th Report of the Committee on Freedom of Association, paras. 143-241). As a result, nobody could claim in this Committee that the discussion was not taking place on a solid basis.

A number of issues were raised by the Committee of Experts in its observations this year. First of all, it had considered that there was insufficient protection for workers against anti-union discrimination based on trade union membership and activities. The Committee of Experts had thus concluded that the exclusion (or potential exclusion) of these workers from the protection of the Workplace Relations Act, 1996, remained problematic and had accordingly recommended that the Government amend the Act. The Committee of Experts had also considered that there was inadequate protection for workers against discrimination based on the negotiation of multiple business agreements and continued to have concerns regarding the clear wording of the Act, which excluded the negotiation of multiple business agreements from being considered as "protected action". The Committee of Experts had requested the Government to amend the Act accordingly.

Furthermore, the Committee of Experts had previously expressed concern over the following issues: that primacy was given to individual over collective relations through AWA procedures; that preference was given to workplace/enterprise-level bargaining; that the subjects of collective bargaining were restricted; and that an employer of a new business appeared to be able to choose which organization to negotiate with before employing any persons. Having closely considered the Government's observations, the Com-

mittee of Experts remained of the view that the Act gave primacy to individual over collective relations through the AWA procedures. Furthermore, it remained of the view that preference was given to workplace/enterprise-level bargaining where the Act provided for collective bargaining. The Committee of Experts had therefore once again requested the Government to take steps to review and amend the Act to ensure that collective bargaining would not only be allowed, but encouraged, at the level determined by the negotiating parties.

The Worker members assumed that the members of the Committee of Experts were competent and impartial, yet the Government rejected both the observations and the recommendations of the Committee of Experts, just as it did two years ago. In 1998, the Government had said that some of the concerns expressed by the Committee of Experts appeared to have been based on a misunderstanding of the legislation. The Government then had been very confident that, viewed in the light of their proper context, the arrangements criticized by the Committee of Experts would not detract from the provisions in the Act which promoted and encouraged collective bargaining. Basically the Government was stating what it had stated two years ago. This point brought the Worker members to address the issue of how this case had been dealt with by the Government. The Worker members explained that the ILO's supervisory system was characterized on the one hand by careful, impartial, independent, objective and legal analysis and interpretation of all relevant points by a group of eminent experts in labour law from all over the world, including from Australia; and on the other hand, by constructive tripartite discussion and collaboration, not necessarily purely of a legal nature in this Committee, in order to contribute to the finding of solutions for problems identified by the Committee of Experts. Indeed, this was in line with the expression "dialoguer pour progresser" as was often said by the former Belgian spokesperson for the Workers' group, Mr. Jef HOUTHUYS.

Two years ago the Worker spokesperson had expressed concern about the tone and approach of the Australian Government with regard to dialogue in this case. That tone was polemical and inflexible and did not suggest any openness to different viewpoints and opinions than the Government's own. The Worker members had heard the same tone and approach today and they deeply deplored it. The Worker members were confident that the Committee of Experts had made an extra effort in understanding the Australian case over the past two years. They were also confident that the Committee of Experts had in particular sought the experience, the insight and the intellect of its Australian member who probably knew the situation in her own country well. They therefore could not accept the argument that the Committee of Experts had not understood the Australian context correctly. Nor could they understand the reaction of the Government. In any event, if the Government did not do anything, the Committee of Experts would repeat its observations as long as there was no change in the situation. Moreover, if the Committee on Freedom of Association had to issue decisions in cases similar to Case No. 1963, it would probably also reach the same conclusions and recommendations. This would bring the Government and the supervisory system to an unfortunate deadlock, which would have serious consequences for the system as a whole.

Since the Worker members were seeking ways and means for the Government to put an end to this deadlock, in this respect the Government could seek out comparisons in other countries' approaches, like New Zealand, which had tried similar policies in the recent past but which was re-examining them now. It was important that the Government seek some contact or collaboration with the Office, preferably in Australia. The results of this sort of contact of cooperation could help all parties to analyse the situation in a dispassionate way. This was the appeal of the Worker members, and they sincerely hoped that the Government would show at least some goodwill in accepting this modest and careful proposal.

The Employer members noted that this case had been discussed in the Committee in 1998 but that the discussions would be different this year since there were quite a few differences with regard to the information available. Referring to the comments made by the Committee of Experts this year, they noted that different aspects were raised. Firstly, the question was raised with respect to the exclusion or potential exclusion of certain categories of workers from protection against dismissal based on trade union membership and activities. They noted the explanations given by the Government to the effect that there were two different types of provisions relating to anti-union discrimination and that the worker who was not covered by one of these provisions would automatically be covered by the other provision. They further noted that the Committee of Experts considered that the scope of the two anti-discrimination provisions was sufficiently different, in particular since a protection provided under section 170CK of the Workplace Relation Act, 1996, applied to a wider range of trade union activities, and that the exclusions from the protection under that section remained problematic. The Employer members indicated that this comment was not very clear. They noted that the Committee of Experts normally was very specific in naming violations of the Convention; perhaps it was exercising caution in this instance.

With regard to discrimination based on the negotiation of multiple business agreements, they stated, based on the wording of the comments by the Committee of Experts, that the latter had not detected a clear violation of the Convention on this point either. It was surprising however, that the Committee of Experts had not requested information concerning the impact of the relevant provisions in practice, for it was of crucial importance to ask for such information in the event that there was disagreement on the protection provided by such provisions. The request for additional information in order to ascertain the compatibility of national practice, and not only legislation, with the Convention was an important element of the supervisory machinery. In this context, the Employer members noted the Government representative's statement that the Committee of Experts had not given adequate consideration to the court decisions on these issues. They emphasized the importance of court decisions providing a realistic picture of the impact of provisions in practice.

The second issue of concern in respect of the Workplace Relations Act, 1996, raised by the Committee of Experts, concerned the primacy given to individual over collective relations through the AWA procedures, which had not promoted collective bargaining, as well as the preference given to workplace/enterprise-level bargaining. In this respect, the Employer members recalled that in many countries enterprise-level bargaining was preferred to sectoral-level bargaining. However, this situation had not been criticized by the Committee of Experts.

The Employer members then referred to the position of the Committee of Experts that Convention No. 98 should promote collective bargaining. In this regard, they recalled their initial statement in the general discussion in respect of globalization where they had emphasized new mega trends and the phenomena of the increase in individual, more targeted, solutions and the rejection of a collective approach to problems. This could be seen as one of the several trends emerging as a result of globalization. The issue was therefore not one of whether preference was given to workplace/enterprise-level bargaining over industry-level bargaining, but whether or not workers could choose freely the level at which negotiations with the employers could take place. Moreover, in general, individual agreements should be allowed if workers and employers had agreed on this point. Hence, the Employer members had not noted a violation of the Convention in this respect. They further referred to Article 4 of the Convention according to which national conditions should be taken into consideration in the implementation of the Convention. Hence, Article 4 of the Convention did not give preference to collective agreements over individual agreements or sectoral-level bargaining over enterprise-level bargaining.

Regarding the issue of strike pay as a matter for negotiation, the Employer members recalled a fundamental principle of civil law concerning "no work no pay". However, they pointed out that the right to strike was not to be dealt with under Convention No. 98, but under Convention No. 87. They therefore considered that this particular issue had been inappropriately raised in the context of Convention No. 98, the aim of which was to promote voluntary collective bargaining.

Regarding the reference made by the Worker members to the Committee on Freedom of Association (CFA), the Employer members recalled that it was not the mandate of the CFA to interpret Conventions.

In conclusion, the Employer members considered that still more information was needed with respect to the practical implementation of the provisions which had been the subject of the Committee of Experts' comments. To this end, dialogue and contact with the Government should be continued in order to assess practice in the country. On the basis of more information, this interesting case could be reviewed at the Committee's next session.

The Worker member of Australia commended the Committee of Experts on its detailed analysis of this case, noting that the expertise, impartiality and competence of the Committee of Experts was widely accepted. He was therefore concerned by the response of the Australian Government to the Committee of Experts' comments. At the time that these became public, the Government issued a media release rejecting the findings of the Committee of Experts and questioning the Committee of Experts' integrity. The Government had accused that body of ignoring information provided, then accused it of ignorance. He cited the statement made by the Australian Government in the media release that "in requiring the Australian Government to amend its legislation, the ILO needs to realize that it is the Federal Parliament, elected by the Australian people, who decide Australian law — and not the ILO". The speaker raised these issues because he considered that the Committee was facing a potentially serious breakdown in the supervisory system, since here was a Government which apparently did not accept

the integrity of the Committee of Experts and did not understand the supervisory processes. He cautioned that the Government's response would need to be taken into account in drawing up the conclusions of the Committee.

The Worker member noted that, in ratifying Convention No. 98 and in undertaking to follow the principles set forth in the 1998 Declaration, which include the principles of the right to organize and to collectively bargain, the Australian Government undertook to encourage and promote the principles of the Convention. Australian legislation did not comply with the essential requirements of the Convention for a number of reasons. First, employers alone were able to determine the level at which collective bargaining could take place. Lawful industrial action was only available in support of single-enterprise bargaining and not collective bargaining situations across multiple workplaces. Any action on the part of workers to defend their rights across multiple workplaces was unlawful. Moreover, individual agreements were given primacy over collective agreements. The speaker noted that, two days ago, a government agency had stated that individual agreements "could override award provisions". He clarified that award provisions were in fact collective agreements. He considered this to be a deliberate strategy for the promotion of individual agreements, noting that the agency did not have either a strategy, plan or budget to promote collective bargaining as required by the Convention. It was therefore clear that the preference of the government agency was for individual agreements. The Committee of Experts had therefore correctly determined that the Government was not in compliance with the Convention.

The speaker expressed his concern at the gap in understanding of the supervisory processes between the Committee of Experts and the Australian Government. In light of this divergence, he agreed with the Employer members' suggestion that, to further a spirit of dialogue and cooperation and to provide an opportunity for increased understanding between the ILO and the Government, serious consideration be given to having the ILO conduct a visit to Australia. Such a visit might provide a way forward and permit the Conference Committee, the Committee of Experts and this Office to better comprehend how the legislation was being applied in practice in the country.

The Employer member of Australia expressed his support of the statements made by the Employer members and the Government representative. He agreed with the Government representative that the Committee of Experts was mistaken in its understanding of section 170CK of the Workplace Relations Act, 1996. Noting that the Government had already provided detailed explanations on this point, he hoped that the Committee of Experts would take these clarifications into account. He also concurred with the Government's statements on the situation in Australia relative to collective bargaining and urged the Committee of Experts to take those statements into consideration. The Australian labour relations system had traditionally relied on collective negotiation.

It was not particularly useful to examine the labour legislation of a particular country without placing it in the context of the labour relations system as a whole. Noting that Australia had a unique labour relations system, he pointed out that it rested on legislation adopted at both the federal and state levels. Australian labour legislation was based on certain basic principles, some of which continued to apply in full and some of which had been modified. He focused on three aspects of this legislation. First, workers continued to enjoy full freedom of association rights and almost full protection against intrusion into their privacy regarding their membership, through the Australian system of voluntary registration. Second, there were restrictions on the right to strike and lock-outs and workers or employers taking unlawful action in this regard were subject to prosecution. Finally, disputes between employers and workers that were not resolved through collective negotiation would be subject to legally binding arbitration at the election of either party. The speaker noted that the system was in a period of transition, moving towards a less centralized labour relations system and less regulated system, but the old system was still in effect.

The Employer member disagreed with the Committee of Experts' findings in certain respects, stating that it had failed to understand Australia's system which was in transition, had failed to place its comments on specific provisions within the context of the legislation as a whole, had sought to impose its own interpretation of the legislation and had failed to understand certain portions of the legislation. He noted that Australia's labour relations system was no different from that of other countries in that it sought to strike a balance between the interests of employers and workers. The important issue was the manner in which that balance was struck.

In conclusion, he noted that all the speakers had generally admitted that this case involved complex issues and detailed legislation of difficult interpretation. Accordingly, he believed that there was room for continuing dialogue with the Committee of Experts and the Conference Committee. An ongoing dialogue should take place on the issues identified and additional information should be sought and considered.

The Worker member of Finland supported the statements made by the Worker members as well as by the Worker member of Australia. He expressed his surprise that an industrialized and developed country like Australia had not met its basic obligations under the Convention, particularly with regard to collective bargaining. His comments focused on the Australian Workplace Agreement, noting that the Australian case bore interesting similarities to the situations of the United Kingdom and New Zealand in the 1990s. In the case of the United Kingdom, legislation had been introduced limiting the rights of trade unions to bargain collectively. In New Zealand, the enactment of the Employment Contracts Act had reduced the coverage of collective bargaining agreements. He considered that the Australian legislation had a similar effect in that the AWA gave precedence to individual agreements over collective agreements. Under the Workplace Relations Act, 1996, an AWA, which was essentially an individual agreement, took precedence over collective agreements in the particular sector concerned. The AWA could not be displaced, even if the collective agreement established terms and conditions of employment that were preferential to those contained in the individual agreement.

Citing a study on AWAs conducted by the Australian Council of Trade Unions (ACTU), he stated that it demonstrated the negative effect of AWAs on workers. Under the Australian legislation, employers could apparently give preferential treatment to workers who agreed to regulate the terms and conditions of their employment under individual agreements. Some jobs in Australia were in fact being advertised as AWA-only jobs, which prevented workers from collectively bargaining at all. In light of the ACTU study and other information available, it was clear that the Australian legislation was not in compliance with the requirements of Article 4 of the Convention. He characterized the legislation as a short-term solution that did not serve the interests of either employers or workers. The provisions of the legislation should therefore be amended as requested by the Committee of Experts to guarantee the encouragement and promotion of collective bargaining. He expressed the hope that the Government would soon be able to report progress in this regard.

The Worker member of New Zealand cited, as a contribution to the consideration of the Australian case, the Employment Contracts Act enacted by her country in 1991 as an example of the negative impact that the Australian legislation would have on workers. The Employment Contracts Act did not promote collective bargaining and favoured individual over collective relations. The dramatic negative effect of this legislation on New Zealand workers had resulted in the most vulnerable workers receiving the least protection in the employment relationship. Those workers in less skilled jobs were most affected and the legislation had had a disproportionate negative impact on the indigenous Maori and Pacific Island people, women and the young, who were concentrated in lower-paid, part-time and precarious jobs. The promotion of individual contracts in New Zealand had also undermined other basic ILO principles such as the standards on equality of opportunity and treatment. In 1998, the UN Committee on the Convention on the Elimination of Discrimination Against Women, considering New Zealand's situation, expressed serious concern that the emphasis on individual rather than collective agreements in the Employment Contracts Act was a major disadvantage to women in the labour market because of their dual work and family responsibilities.

She cited the problem of cleaners and supermarket workers forced to work family-hostile split shifts for very low pay as well as figures reflecting a decrease in real wage rates from 1987 to 1997. In some cases real income decreased by 11 per cent and in other cases up to 33 per cent. With regard to young workers, they reported being offered inferior individual contracts on a take-it-or-leave-it basis without being given the opportunity to seek the advice of a third party. Barriers to the right to organize had reduced union membership and effectiveness in various sectors and, as a result, had reduced the effective representation of workers' interests. At best, the legislation had impaired constructive working relationships at the enterprise level. At worst, it had introduced an element of fear in some workplaces, with most unions in the public and private sectors maintaining secret lists of members who did not want their employer to know their union status. She cited the example of primary school principals employed in 2,300 schools in New Zealand who, under the current law, were denied the right to strike in pursuit of a collective multi-employer agreement. Since 1992, systematic attempts had been made to entice these principals out of the union-negotiated collective contract and into individual contracts by offering them financial incentives. Those who chose to remain with the collective agreement were financially penalized.

The Employment Contracts Act had forced a significant segment of the labour market into highly precarious employment circumstances. The speaker noted that the number of people working

more than one job had increased by 25 per cent since the law was enacted in 1991. Noting that the undermining of bargaining agreements had created great unfairness in the labour market, she stated that the measures taken by the new Government to repeal the Employment Contracts Act were very welcome and she expressed the hope that Australia would follow suit.

A Worker member from France said that the Worker members' statements showed they had a thorough grasp of the Australian system of deregulating collective bargaining. Convention No. 98 provided that voluntary collective bargaining between employers' and workers' organizations should be promoted and encouraged. This was not the case in Australia. By failing to give trade union representatives adequate protection, the Government was in breach of its duties under Conventions Nos. 98 and 135. Moreover, the fact that employers were free to choose before recruiting a single employee which organization they wished to bargain with, threatened the workers' right to set up organizations of their own choosing. It was for the social partners alone to choose which level to bargain at (local, national or by sector), and the Government had no business favouring one or the other. By the same token, the Government should not interfere with, and much less, prohibit agreements on strike pay that employers and workers might reach.

The speaker pointed out that in the State of Queensland progress had been made in line with comments by the Committee of Experts, and that too showed those comments were well founded. By ratifying Convention No. 98, Australia committed itself to ensuring the effective implementation of each of the Convention's provisions. But by narrowing the scope and modalities of collective bargaining, the Government had failed to live up to its commitments. Collective bargaining was a fundamental principle of the Organization and had been enshrined in the 1998 Declaration. An ILO mission to Australia could shed light on the matter and help ensure that worker representatives were better protected and collective bargaining effectively promoted.

The Government representative agreed with the Worker member that the Convention did not mean tolerate, and that the word "promote" was in the Convention. However, he indicated that the word "promote" had to be considered in context, and that context was measures appropriate to national conditions, where necessary. Having regard to the totality of Article 4, he considered Australia was in compliance with that provision of the Convention.

The Government representative indicated his Government's wish to continue the dialogue with the Conference Committee, particularly in light of the unique and complex nature of the Australian labour relations system. Noting that the legislation in question was fairly recent, he stated that there was so far little jurisprudence interpreting its provisions. In this respect, the ACTU study cited by the Worker member of Finland contained no more than allegations and was unsupported by any court decisions. He pointed out that the references to the United Kingdom and New Zealand made by other speakers were not relevant to Australia's situation and reminded the Conference Committee that only Australia was before it today.

The issues raised in the comments of the Committee of Experts arose from fine points of interpretation of complex legislation and there were no cases yet before the courts interpreting the application of the law. The speaker cited the Committee of Experts' 1997 comments stating that the impact of the legislation would not be fully clear for several years, and that its natural evolution should be carefully monitored to ensure that the spirit of the Convention was maintained.

The Government representative rejected the statement made by the Worker member of Australia that his Government intended any disrespect to the Committee of Experts, noting that Australia had willingly appeared today before the Conference Committee to continue the dialogue on the points raised. However, he considered that more information and ongoing dialogue was necessary and committed his Government to providing all assistance required towards that end.

The Worker members, in response to the Government representative's statements, indicated that the Australian Government apparently considered the reference in Article 4 of the Convention to "measures appropriate to national conditions" and "where necessary" to constitute a flexibility clause. While some Conventions contained clauses allowing for flexible interpretation, Convention No. 98 had no such clause. The Government apparently considered this clause to mean that if such measures were not appropriate and not necessary, it should not be obligated to promote collective bargaining. This was a misconception on the part of the Government. They stated that this kind of reasoning stressing the uniqueness of the national situation, which could not be judged by a universal standard, reminded them of the same arguments made by then communist governments that they should be measured by a different standard because their labour relations systems were different from those of capitalist systems. Some developing countries had also put forward this argument.

The Worker members interpreted the clause "where necessary" in Article 4 to mean that promotional activities might not be necessary in countries where the collective bargaining system was highly developed. They did not consider this to constitute a flexibility clause, but requested the Committee of Experts to clarify this point and the former one in its future comments on this case.

The Australian system was admittedly complex, but the Worker members saw no reason for Australia to be treated differently from other countries. In response to the Government's statement that the impact of the legislation would not be seen for a few years, the Worker members agreed with the Employer members that there were two factors in compliance, law and practice, and there must be balance between the two. First, the correct legislation must be in place and then the courts could examine its application in practice. There was no reason to wait for changes in legislation until there were court judgements since the Committee of Experts had identified contradictions with the Conventions and called for the law to be amended now.

The Worker members requested that the Committee's conclusions recommend that the development of law and practice in Australia be monitored. Responding to the Employer members' statement that there were grey areas in the Committee of Experts' comments, the Worker members stated that the Committee of Experts' comments were unambiguous and on three out of five points stated that the Government must amend its legislation. With regard to the Committee of Experts' references to Australian Workplace Agreements and its statements expressing concern on the wording of the Workplace Relations Act, 1996, the Worker members acknowledged that there might be some nuances in the Committee of Experts' comments not categorically calling for changes in the law, but stressed that it was clear that the Government must amend its legislation.

The Worker members indicated their disagreement with the Employer members' statement that a preference expressed in the law for a particular level of collective bargaining would not be a violation of the Convention. The Committee of Experts' comments clearly stated that the level of collective bargaining should be determined by the bargaining parties, not by the Government. The Worker members therefore requested that this point be included in the conclusions of the Committee. To avoid polemic over the right to strike, he did not wish to raise the question of strike pay, but expressed his surprise at the difference of the position taken by the Employers within the present Committee, as compared to the unanimous position taken in the Tripartite Committee on Freedom of Association on cases regarding the right to strike.

The Employer members recalled that this long and mostly fair discussion had been between the Committee and the Government and it therefore should not end in a discussion on the Employers' and Workers' general positions on freedom of association and collective bargaining. However, they noted that there had been general agreement in the Committee with regard to the need to obtain further information, in particular with regard to the effect of legislation in practice. They further noted that the legislation in question had only been adopted two years ago, and that it would therefore take some time for the new legislation to take effect and for its impact to be clear. Consequently, concrete results were not yet available.

Turning to the question of whether or not Article 4 of Convention No. 98 contained flexibility clauses, the Employer members stated that this was a theoretical issue which they did not wish to discuss in this context. However, if Article 4 provided for "measures to be taken appropriate to national conditions", this would indicate that the Article left a margin of manoeuvre to governments with respect to legislation.

With reference to statements made by the Worker members, they recalled that the positions of the Committee on Freedom of Association were taken unanimously. Nevertheless, the CFA did not have the mandate to provide interpretations of Conventions. Furthermore, the Employers' position concerning the right to strike had remained the same for the past 18 years.

They agreed that the dialogue commenced with the Government should be continued. For that purpose, the Government should provide, as requested by the Committee of Experts, further information, in particular on the effect of the legislation in question in practice.

The Worker members requested the Government to react to their proposal regarding cooperation between the Office and the Government.

The Committee noted the statement by the Government representative, as well as the discussion which took place in the Committee. The Committee recalled that according to the Committee of Experts several provisions of the 1996 Federal Workplace Relations Act called into question the application of Articles 1 and 4 of the Convention by excluding certain categories of workers from the scope of the legislation and limiting the scope of trade union activi-

ties covered by the provisions concerning anti-union discrimination, as well as giving primacy to individual contracts over collective relations through the Australian Workplace Agreements procedure. The Committee expressed the firm hope that the Government would supply a detailed report to the Committee of Experts on the application in law and practice of the Convention and on any measures taken. The Committee recalled to the Government that the International Labour Office was available to dialogue with all the parties concerned on all the issues raised in the Experts' comments. The Committee expressed the firm hope that the Government would find the way to maintain a confirmed dialogue with the supervisory bodies of the ILO and remain in cooperation with the Office in this respect.

Panama (ratification: 1966). A Government representative recalled that the Committee of Experts had indicated in its observation that the conciliation procedure provided for by Legislative Decree No. 3 of January 1997, applicable to export processing zones, could impede the application of Article 4 of the Convention. He explained that the above provision had only sought to strengthen voluntary bargaining through the creation of a special commission to examine disputes. Time periods had been set for the procedures referred to the commission. These consisted of ten days to contest the allegations, 20 days to reach a negotiated solution and, if the parties did not reach an agreement, the commission had five days to present them with a proposed solution. During this period, the parties could continue negotiating directly and, if they considered it appropriate, refer the matter to an arbitration tribunal. Article 4 of the Convention did not prohibit the determination of periods of time which, in the present case and in the view of the Government, were of a reasonable length and did not impede voluntary negotiation. With a view to gaining a better understanding of the observation made by the Committee of Experts, the Government might wish to have recourse to the competent services of the ILO with a view to meeting the concerns of the Committee of Experts, taking into account national circumstances.

With regard to the second matter raised by the Committee of Experts concerning the four amendments which should be made to the Labour Code as a result of a case submitted to the Committee on Freedom of Association by an employers' organization, he referred to the important demonstrations which had occurred in his country when the previous Government had submitted draft reforms to the Labour Code to the Legislative Assembly. On that occasion, Panamanian society had been shaken by violent demonstrations, which had even caused the death of workers. The new Government had taken office in September 1999 and had not yet obtained its own parliamentary majority through which it could adopt legislation reforming the Labour Code. For legislative reforms to be successful, effective consultations and the consent of the social partners was needed. If one of the parties was opposed to the reform, it was of no avail for a government to endeavour to undermine social peace in order to force through amendments to the labour legislation. In view of the above, he requested the Committee to take into account in its conclusions the unstinting will of the Government to continue the dialogue with the ILO's supervisory bodies. He reiterated that in order to achieve the results sought by those bodies, it was indispensable for the social partners in Panama to be in agreement with the objectives in question.

The speaker added that the Government had transmitted the conclusions of the Committee on Freedom of Association to over 100 organizations. In reply, the great majority of workers' organizations had clearly indicated their opposition to the reform. The employers' organizations had not replied to the Government to this date.

He added that there also existed in Panama a bipartite body of workers and employers, the Labour Foundation, which might be an appropriate forum for promoting dialogue with a view to resolving the points at issue. The matter could also be referred to other bodies. Finally, he urged the Committee to take into account the sincere commitment of his Government to make every effort to enable the representative organizations of employers and workers to reach agreement, through dialogue and concerted action, on the basis of which the Government could submit draft legislation which included the points raised in the Committee of Experts' observation.

The Employer members recalled that both Employers and Workers had the right to submit cases to the Committee on Freedom of Association alleging violations of freedom of association. With regard to the case of Panama, they explained that there were two issues to be examined.

The first issue addressed by the Committee of Experts in its comment consisted of the conciliation procedure of 35 working days in export processing zones, in accordance with Decree No. 3 of January 1997, which had been considered by the Committee of Experts as being too long for a conciliation procedure and likely to hinder the application of Article 4 of the Convention. The Employer members pointed out in this connection that the Convention did not contain any provision specifying time periods and that in many countries conciliation procedures were longer than 35 working days.

The interesting part of the case concerned the second issue on which the Committee of Experts had commented. In this respect, they endorsed the observation of the Committee of Experts, which had referred to the opinion expressed in the conclusions of Case No. 1931 of the Committee on Freedom of Association regarding the need to amend some of the provisions of the Labour Code which were contrary to the right to organize and bargain collectively. The provisions which had been criticized permitted the imposition of arbitration at the request of one of the parties to the collective dispute; the section which restricted the composition of the representatives of the parties to the collective bargaining process; the section which provided for disproportionate penalties in the event of the withdrawal of one of the parties from the conciliation procedure; and the section providing for disproportionate penalties in the case of failure to reply to a statement of claims. The Employer members agreed with the Committee of Experts that these provisions of the Labour Code needed to be amended.

The Employer members indicated that the case was particular in another respect. The conclusions reached on the case by the Committee on Freedom of Association contained a point concerning the issue of strike pay which had not been taken up in the comments of the Committee of Experts, even though the latter had referred to the conclusions of the Committee on Freedom of Association in their totality. Considering the reason for such an omission, the Employer members believed that it might have been due to a more formal reason, since the right to strike had always been examined under Convention No. 87, which was not, however, the Convention under examination last year. Nevertheless, the same issue, namely the question of strike pay being a matter of negotiation and not of legislation, had been raised during the morning sitting of the Conference Committee in the context of the case of Australia with regard to Convention No. 98. With regard to the case of Australia, the conclusions reached on the issue by the Committee on Freedom of Association had been favourable to the workers, whereas its conclusions in this respect on the case of Panama had fav been ourable to the employers. The omission of this issue from its observation therefore, in the view of the Employer members, constituted an act of arbitrary judgement by the Committee of Experts and the Employer members therefore could not accept such a procedure. If the Committee of Experts wished to refer to the conclusions of the Committee on Freedom of Association in their entirety, they could not omit part of such conclusions without indicating the reason for doing so. It was not admissible to raise this issue only in certain cases.

Turning to the statement by the Government representative to the effect that amendments to the legislation under examination were not possible due to the absence of consensus in the tripartite committee established for that purpose, the Employer members recalled that it was the constitutional obligation of the Government to ensure the application of the provisions of ratified Conventions. The absence of consensus in a tripartite committee could not serve as an excuse in this respect. In conclusion, the Employer members expressed the view that, although short, the case contained many interesting aspects.

The Worker members recalled that the observation by the Committee of Experts concerned two specific points. First, they had referred to government interference in the resolution of collective disputes in export processing zones. A Decree of 1997 on dispute resolution in export processing zones provided for the setting up of a tripartite consultative commission and had set out a procedure for labour disputes. This Decree permitted the dismissal of workers who engaged in a strike without following the required procedures. This procedure imposed a 35-day waiting period before workers were entitled to strike. This conciliation procedure could in practice make it impossible to strike. The Worker members therefore asked the Government to amend the Decree in order to reduce the time laid down for conciliation, with a view to bringing it into conformity with the provisions of the Convention.

The Worker members also referred to the other point raised by the Committee of Experts concerning Act No. 44 establishing standards to regulate and modernize labour relations, adopted on 12 August 1995. This point had been examined by the Committee on Freedom of Association in the context of Case No. 1931. With reference to the observations made by the Committee of Experts and the Committee on Freedom of Association, the Worker members noted that it appeared that Act No. 44 was in contradiction with Convention No. 98. The Act therefore had to be amended so that the autonomy of the organizations engaged in collective bargaining could be restored. They insisted on a tripartite solution to this question. It was essential that the Government consulted not

only with workers' organizations, but also with employers' organizations in the process of amending this legislation.

The Worker member of Panama noted that the Labour Code in his country established a time limit of 15 days for conciliation during a negotiation process and that this had been extended by a Government Decree to 35 working days in export processing zones. It was important to emphasize that the same Decree prohibited the right to strike and provided that negotiation was not compulsory for employers. He maintained that the Committee of Experts should analyse the relevant legislation in its entirety as it clearly impeded freedom of association and was in violation of Convention No. 98 and Convention No. 87. He expressed disagreement with the second issue raised in the observation made by the Committee of Experts in which it requested the Government to amend its legislation. When drawing up its observation, the Committee of Experts had not taken into account the labour law principle of *in dubio pro operario*, whereby in the event of doubt the most favourable outcome for workers should always be sought. He stated that the reform proposed by the Committee of Experts would be in addition to the five other reforms which had previously been imposed upon the workers, resulting in a deeper crisis, increasing the unemployment rate and eliminating the rights which they had obtained. He also recalled that on the occasion of the most recent reform of the labour legislation, four deaths had occurred and over 500 persons had been detained, leading to a 12-day strike. A new reform of the labour legislation should be avoided, since it would give rise to a repetition of the same situation. He therefore requested the Conference Committee to take into account the critical situation of his country in its conclusions.

The Government representative welcomed the statement by the Worker members and the Worker member of Panama in support of the Government's request to the Committee to allow it to continue the process of dialogue with a view to achieving consensus. He informed the Employer members that his Government was not endeavouring to justify a failure to take action, but was explaining that problems had to be resolved without provoking a social crisis. The Government had therefore embarked upon consultations with all the organizations of workers and employers in accordance with the ILO principle of tripartite consultation. He reiterated that Decree No. 3 of 1997 promoted voluntary collective bargaining within the meaning of Article 4 of the Convention. The Decree had established a commission responsible for examining the complaints of workers and employers in the event of conflict, but left open the possibility for the parties to engage in direct negotiation or have recourse to arbitration. He therefore could not fully understand the request of the Committee of Experts in this respect. Moreover, he emphasized that all the matters raised would be included in consultations with workers' and employers' organizations so that effect could be given to the request made by the Committee of Experts by means of consensus.

The Employer member of Panama recalled that the Committee on Freedom of Association had recognized the existence of violations of Conventions Nos. 87 and 98 in Panama. While tripartite consultations certainly had to take place, this could not be used as an argument to put off compliance with the commitments which had been assumed. The Government was obliged to respect its international obligations and, in the present case, had to comply with the recommendations of the Committee on Freedom of Association and the Committee of Experts. It would be dangerous for compliance with the recommendations of the supervisory bodies to be made subject to the will of one of the social partners. He also criticized labour legislation in the region which regulated the activities of workers' and employers' organizations in an excessive manner. He insisted that the Government should not postpone the reforms to the legislation requested by the supervisory bodies.

The Employer members, with reference to their initial statement, recalled that the Committee of Experts, which was always praised for being infallible, had referred in totality to the conclusions of the Committee on Freedom of Association and could not therefore differ from those conclusions. This should also be reflected in the conclusions of the Conference Committee. They emphasized in this respect that the question of strike pay was a matter for negotiation and should not be regulated directly by the Government. Moreover, the absence of consensus in a tripartite committee could not be used as an excuse by the Government for failing to comply with its constitutional obligation to amend legislation which violated the provisions of the Convention.

The Worker members emphasized that the 1997 Decree should be amended with a view to shortening the compulsory conciliation procedure. They also noted that, while Act No. 44 raised a particular problem regarding the right to strike, the Worker member of Panama had explained the background to this legislation and his intervention should be taken into account. The Worker members once again emphasized that a solution should be found through tripartite dialogue with the full participation of the trade unions. With reference to the comments made by the Employer members, who had noted a possible contradiction in the report of the Committee of Experts, the Worker members considered it appropriate to request further explanations on this point.

The Committee noted the statement made by the Government representative and the discussion which took place thereafter. The Committee stressed that this case was of particular significance since it concerned the autonomy of the parties to bargain collectively. The Committee noted the explanation provided by the Government representative. The Committee expressed the firm hope that the next report to the Committee of Experts would contain details on the concrete measures taken or envisaged in law and practice, after consultations with employers' and workers' organizations, to encourage and promote the full development and utilization of voluntary negotiation with a view to the regulation of terms and conditions of employment by free collective agreements. The Committee firmly hoped to be in a position to note concrete and definite progress in the situation at an early date as requested by the Committee of Experts and the Committee on Freedom of Association. The Committee recalled that the technical assistance of the Office was available to the Government. The Committee took note of a possible contradiction in the observation of the Committee of Experts regarding pay for strike days and asked for more information on this matter.

Turkey (ratification: 1952). A Government representative noted the observations of the Committee of Experts with respect to protection against anti-union discrimination, limitations on collective bargaining, the right to organize for public servants, and collective bargaining rights of workers in export processing zones (EPZs).

With regard to anti-union discrimination, he recalled that the Government had submitted with its latest report the copies of several judicial decisions which, in the words of the Committee of Experts, showed that compensation in cases of various acts of anti-union discrimination was granted quite frequently. He pointed out that in such cases, section 31 of the Trade Unions Act provided a compensation of not less than the total amount of the worker's annual salary. This amount could also be increased by contract or collective agreement or by the ruling of a court. This was neither a fixed amount, nor did it affect the rights of the worker concerned under labour legislation or any other law.

Turning to the issue of alleged limitations on collective bargaining, he recalled that the Committee of Experts had noted that legislative limitations on collective bargaining did not appear to be observed by organizations of workers which, in practice, were free to pursue free collective bargaining. In this respect, he informed the Committee of the preparation of two draft bills amending several Acts, including the Trade Unions Act (No. 2821) and the Collective Agreement, Strike and Lockout Act (No. 2822), which took into account the Committee of Experts' comments in order to promote freedom of association and collective bargaining in Turkey. These two bills had been communicated to the social partners for their views and a meeting had been held on 30 May. Consultation with the social partners would continue in the coming weeks. These draft bills provided for the improvement of collective bargaining rights and workers' protection against acts of anti-union discrimination. For example, in order to give legal status to the already existing active involvement of confederations in coordinating bargaining activities of their affiliates, the proposed amendment empowered them to conclude basic agreements at the national level with a view to setting broad-based standards as guidelines for their affiliates' bargaining activities. The proposed amendments also introduced definitions and legal clarity with regard to "group (multi-employer) collective agreements", which in practice performed the function of industry-wide agreements.

With respect to the issue of dual criteria for determining the representative status of trade unions for collective bargaining purposes, he pointed out that the Government had proposed to the social partners in the above draft bill the lifting of the requirement of 10 per cent membership of the union in the relevant branch of industry. If this provision was accepted by the social partners, a trade union that had the majority of the workers at the workplace would have representative status for bargaining purposes. The final form of the proposed legislation would depend on the response of the social partners and the parliamentary process.

On the issue of the right to organize for public servants, he indicated that the draft bill on public servants' unions had not been enacted due to the request of opposition parties for its revision and the holding of general elections in Turkey. A new draft bill was now on the agenda of the Parliament and was currently being debated at the Parliamentary Committee on Planning and Budget. He drew the present Committee's attention to the fact that the draft bill submitted by the Government had already been amended by the Parliamentary Committee on Health and Social Affairs and that it might be further amended before its enactment.

With regard to the question of EPZs, he informed the Committee that an amendment had been proposed to repeal the provisional article 1 of Act No. 3218 of 1985 on export processing zones. With the abrogation of compulsory arbitration, which had only been imposed for a ten-year period, there would be no restriction on the collective bargaining rights of workers employed in EPZs.

He emphasized that Turkey attached great importance to the involvement of workers' and employers' organizations in formulating and implementing the measures envisaged by Convention No. 144. In fact, a bill on the establishment, working methods and principles of the Economic and Social Council had been prepared through consultations with the social partners and was currently on the agenda of the Council of Ministers. When enacted, the draft bill would give a legal status and strengthen and institutionalize the social dialogue system at the highest level, a practice which had already been in effect since 1995 under several government circulars. In conclusion, he informed the Committee that an Agreement for Cooperation between the ILO and Turkey would be signed very soon, which would provide for the continued good cooperation between the ILO and the Turkish constituents with regard to the promotion of the four strategic objectives of the Organization.

The Employer members noted that the Committee had discussed the case of Turkey 18 times in the last 20 years, making this the most discussed case before the Committee, a fact which was, however, no indication of the seriousness of the case in comparison to other cases. Employer members stressed that in relation to this case the Government representatives had always appeared in the Committee and that the Committee had always noted progress in the matters addressed by the comments of the Committee of Experts.

Turning to the contents of the case, they took note of the number of judicial decisions made in relation to Articles 1 and 3 of the Convention which showed that compensation in cases of various acts of anti-union discrimination was granted quite frequently. The compensation provided in such cases was not less than the total amount of the worker's annual salary, an amount which the Employer members considered as quite high. In this regard, the Committee's conclusions should reflect that the Committee of Experts had not criticized this point, but had only requested the Government to continue to provide information on this matter.

As concerns the issue of the prohibition of collective bargaining for confederations, the Government had explained in its report that the heterogeneous structure of confederations had made it difficult to conclude agreements along vertical lines, but that the active involvement of the confederations in the bargaining process was a widely accepted practice. In this respect, the Employer members were of the opinion that it was more important to note that such collective bargaining was indeed carried out in practice, rather than to examine the existence of legal provisions which were not applied. As to the constitutional provision stipulating that no more than one agreement might be concluded for an establishment or enterprise within a given time span, they noted that industry-wide bargaining existed in practice and that collective labour agreements covered whole branches of activities.

With regard to the ceilings imposed on indemnities through law, but which, however, could be increased through negotiation, the Employer members stated that this was in their view a normal approach to the matter. They noted that the amount of such indemnities was one month's salary per year of service, which was higher in some cases than indemnities paid in more developed countries. They believed that the Committee of Experts' comment on this point was more on general aspects of Article 4 regarding the promotion of collective bargaining. The Employer members wished to recall once again the importance of the functioning of collective bargaining in practice.

Referring to the issue of the right to organize for public servants, the Employer members noted that the draft bill on public servants' trade unions had failed to be approved, and that new proposed legislation on this question had been submitted to Parliament.

On the issue of criteria contained in legislation determining the representative status of trade unions for collective bargaining purposes, they noted that this was a question well-known to the Committee. They noted that the Government was in favour of amending the relevant provisions, but that the social partners had rejected this proposal. Nonetheless, legislation which imposed criteria for determining the representative status of trade unions for collective bargaining purposes was in violation of the Convention, it was the Government's obligation to bring such legislation in line with the requirements of the Convention. In this respect, the Employer members criticized the fact that while the social partners had blocked attempts to amend the legislation in question, Turkish workers' representatives continued to raise this issue at the Committee.

With regard to the question of imposed compulsory arbitration in EPZs for the settlement of collective labour disputes, they noted that the relevant legal provisions would soon expire.

The Employer members welcomed the establishment of a tripartite committee with a mandate to examine labour legislation and to propose amendments where necessary. In conclusion, the Employer members stated that the Government should be requested to continue to supply information, in particular on measures taken to remove any discrepancies which still might exist between existing legislation and the requirements of the Convention.

The Worker members thanked the Government representative for the information provided and his willingness to discuss the case in an open and frank manner. They hoped that this positive attitude would translate into real progress over the next year. This case, which had been discussed on many occasions in the past, offered both gratifying and frustrating aspects. It was gratifying when significant progress was made, such as the ratification of Convention No. 87 in 1993. However, it was also frustrating when anticipated progress failed to materialize. This tension had been reflected in the observation by the Committee of Experts. With regard to the application of Articles 1 and 3 of the Convention dealing with anti-union discrimination, the Committee of Experts had appeared to indicate that some progress had been achieved, but had requested the Government to report on the adoption of the new legislation promised in its previous report. Unfortunately, the Government representative had indicated that the new legislation was still pending before Parliament. The Worker members noted that, according to the Committee of Experts, a number of legislative restrictions on collective bargaining remained which had been in place for many years and conflicted with Article 4 of the Convention, despite indications from the Government that they would be lifted. These restrictions included the prohibition of collective bargaining for confederations, the constitutional restriction of one collective agreement per enterprise and the dual criteria for determining the representative status of trade unions. The current legislation gave the Ministry of Labour the power to certify the competency of trade unions before they could even begin negotiations. These powers were often used in an arbitrary manner and resulted in inappropriate delays in the bargaining process. The Worker members reminded the Government that it should be for the parties themselves to determine the level of bargaining and that the law should promote bargaining, rather than merely envisioning the possibility of collective bargaining. They added that the dual criteria for the representativeness of trade unions resulted in practice in the workers in many sectors not being covered by collective agreements as a result of disputes concerning the representativeness of their trade unions. However, despite the substantial legal restrictions on collective bargaining, the Committee of Experts had noted that some of these restrictions appeared to be ignored in practice, leaving workers' organizations to pursue collective bargaining relatively freely. While the Worker members did not completely accept this view, they observed that if it were indeed the case it was difficult to understand why the Government refused to change the laws to reflect the practice. While understanding that parliamentary process often moved slowly, they recalled that it had been stalled for many years and the credibility of the Government was beginning to be called into question.

They also expressed frustration at the lack of progress in the adoption of the Bill on public servants' rights to organize and bargain collectively, which had also been stalled for many years. They hoped that the Bill was fully consistent with the Convention and ensured full collective bargaining rights to public servants, with the sole possible exception of those engaged in the administration of the State. The reference by the Committee of Experts to the recommendations of the Committee on Freedom of Association in a case concerning restrictions on the right of public servants to bargain collectively and government intervention in the collective bargaining process suggested that some concerns remained about the Bill. The Worker members therefore reminded the Government once again that the Convention required collective bargaining to be promoted, not merely envisioned or tolerated. With regard to export processing zones (EPZs), the Committee of Experts had requested the Government to take all the necessary steps to ensure the voluntary nature of collective bargaining in all EPZs, which were growing in numbers in Turkey as in many other countries. There were currently 17 EPZs in the country, employing 15,000 workers, with plans to establish another eight in the near future. It was particularly disturbing that not a single worker in these zones belonged to a union. Without trade union access to EPZs, workers could not enjoy any collective bargaining rights whatsoever, even though the ten-year period during which compulsory arbitration was imposed had come to an end in a number of EPZs. The Worker members called upon the Government representative to comment on this matter. The Worker members welcomed the progress which had been made in Turkey since the early 1980s in respect of the basic rights of workers. However, the Government appeared to have taken a pause. They therefore urged it to resume the progress of bringing its laws into compliance with its practice in the case of legal restrictions on collective bargaining and into full compliance with the

Convention in general. While welcoming the spirit of dialogue shown by the Government representative, they emphasized that it was necessary for the promised changes to be finally put into practice. They also urged the Government to give serious consideration to accepting the ILO's offer of technical assistance to facilitate the elimination of the remaining obstacles to the application of the Convention.

The Worker member of Turkey also thanked the Government representative for the information provided, but recalled that the application of the Convention by Turkey had been examined by the Committee on 14 occasions since 1983. Although the power of the working people in his country was very effective in mass demonstrations, marches, rallies and industrial reaction, the problems relating to the legislation persisted because this power was not directly reflected in the political arena. He emphasized that the Trade Unions Act did not provide effective protection against anti-union discrimination, since the onus of proof rested with the victim. Moreover, the number of clandestine workers in Turkey was widely estimated at over 4.5 million, with another 750,000 illegally employed foreign workers, who were unable to go to the courts against employers in the event of their dismissal due to trade union activities. He added that, since Turkey had not brought its legislation into harmony with the Termination of Employment Convention, 1982 (No. 158), any attempt to exercise the right to organize met with the severest form of anti-union discrimination. He welcomed the fact that the Government recognized the discrepancy between national legislation and the Convention with regard to the prohibition of collective bargaining for confederations. The next step was to eliminate the discrepancy. The Government also accepted that the requirement of only one collective labour agreement in a workplace or enterprise was in violation of the Convention. Another provision which was in breach of the Convention was section 3 of Act No. 2821, which established the requirement to negotiate on behalf of all the workplaces of an enterprise. This meant that it was not possible to organize workers in only one of an enterprise's workplaces and negotiate on their behalf. Contrary to the Government's claims, he also stated that it was not legally possible to conclude industry-wide collective agreements. He added that industry-wide bargaining and group bargaining were different practices which only coincided very infrequently. In his country, the lack of industry-wide bargaining had left thousands of employees outside the scope of collective agreements in the banking and sea transport sectors. Furthermore, the restriction on the right to bargain collectively was not limited to the imposition of a ceiling on indemnities. Article 5 of Act No. 2821 stated that provisions contrary to the regulatory provisions of laws or regulations could not be included in collective labour agreements. Under this provision, any attempt to provide job security through collective bargaining, in accordance with Convention No. 158, was considered null and void. Indeed, the parties to such an agreement faced imprisonment. He also indicated that the 60-day time limit violated Convention No. 98 and should be repealed. Despite the Government's claim that strike action was entirely open-ended, he said that there was another 60-day time limit on the exercise of the right to strike after the decision had been taken to call a strike. If the strike was not initiated in that period, the right to strike was cancelled.

He reiterated that the whole of Turkish labour legislation had to be brought into harmony with ratified Conventions. While the Ministry of Labour preserved its power to issue certificates of competence to permit collective bargaining, while membership required the endorsement of the public notary and while only one collective agreement could be in force in each establishment, the repeal of the 10 per cent threshold would only lead to further problems. With regard to the right of public servants to bargain collectively, he emphasized the obligation under Convention No. 98 to promote collective bargaining for all public servants not engaged in the administration of the State. It needed to be taken into account in this respect that the term "public servants" in his country covered such categories of public workers as nurses, teachers, gardeners, clerical workers and train operators, who were deprived of many basic rights and freedoms. In Case No. 1989, the Committee on Freedom of Association had called upon the Government to refrain from having recourse to intervention in the bargaining process for public servants. However, over a year after these recommendations had been issued, they had not yet been honoured.

Turning to the issue of compulsory arbitration, with special emphasis on EPZs, he pointed out that the ILO supervisory bodies limited the prohibition of the right to strike to essential services in the strict sense of the term. In this respect, he emphasized that the petroleum, banking, mining, transport, supply and distribution of food and education sectors were not essential within the above meaning, yet in some of these sectors strikes were prohibited and disputes referred to compulsory arbitration in his country. For many years, the Turkish Government had been maintaining that restrictions on the right to strike were in accordance with the ILO's case law concerning essential services. Yet, the excessively broad interpretation applied to this criterion by the Government was illustrated by the recent suspension of strikes in tyre factories on the grounds that they were prejudicial to national defence. Moreover, compulsory arbitration was not limited to cases of the suspension of strikes. The wide range of restrictions and bans on the right to strike in his country led to compulsory arbitration in the case of interest disputes, as recalled by the Committee on Freedom of Association in Case No. 1810. With a view to attracting foreign companies, strikes and lockouts were not allowed for ten years following the establishment of EPZs. Any disputes occurring within the context of collective bargaining during that period had to be resolved by the Supreme Arbitration Council. This was in contradiction with the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. In conclusion, he stated that quite efficient tripartite structures existed in Turkey and that the Government had promised during the course of negotiations to resolve these problems. It was to be hoped that these promises would be honoured in the near future, that the necessary changes would be made in law and practice and that the case of Turkey would not have to be examined by the Committee in the years to come. He therefore urged the Government to take the necessary measures to eliminate the discrepancies between national law and practice and the Convention.

The Worker member of Sweden, speaking on behalf of the Nordic Worker members of the Committee, referred in the first place to the prohibition on collective bargaining by confederations in Turkey. The Government had explained that the heterogeneous structures of Turkish confederations made it difficult to conclude agreements along vertical lines. However, she emphasized that the main issue was not the structures of the confederations or their possible effects on their suitability to carry out collective bargaining, but the fact that they had been deprived of their collective bargaining rights in contravention of the Convention. The right to decide if, how, when and where collective bargaining should be carried out by confederations had to be left to the confederations themselves and their affiliates. They would be well able to determine how to distribute responsibility for collective bargaining amongst themselves, as was the practice in most other countries. She therefore welcomed the statement by the Government representative that the law would be changed on this issue. She also drew attention to the question of the right to organize of public servants and emphasized that the right to organize and to collective bargaining were fundamental rights, to which there should not be any exceptions at all. She supposed that the Government feared that the recognition of these rights would lead to extensive disputes in the public sector, and would harm society. She pointed out that there were different ways of securing the right to bargain collectively and the right to strike, while avoiding negative consequences in areas defined by the ILO as being essential services. For example, in her own country, an independent body had been established, composed of the parties concerned, which decided whether a strike endangered the life and health of the citizens. Due to the fact that the unions had ensured that strikes did not cause such harm, the body had never needed to take such a decision. She therefore emphasized that the recognition of collective bargaining rights did not automatically endanger society and expressed the view that there should be no restrictions on collective bargaining rights, including for public servants, irrespective of whether they worked at the local, regional or national level. If the social partners were trusted by being granted their full rights, they would assume their responsibilities and organize their activities in a serious and sensitive manner. She therefore called upon the Government to give the organizations of public servants full collective bargaining rights without exceptions.

The Government representative recalled that, unlike some other countries, the Turkish system of trade unions was based on the registration of trade union members. This tradition had a long history and had been introduced to counter the inflated membership figures given by some trade unions. He also drew attention to the statement by the Worker member of Turkey that the repeal of the 10 per cent requirement might cause tension and emphasized that, while the Government was willing to repeal this measure, it was first necessary to achieve consensus among the social partners before doing so. He added that, although collective bargaining was undertaken freely in Turkey, the process was often slow. It had been for this reason that the 60-day limit had been introduced. However, this limit did not mean that negotiation could not continue subsequently. He also reaffirmed that trade unions could have access to EPZs, including the right to organize and to collective bargaining. However, if disagreements occurred during negotiation, arbitration was imposed with a view to preventing strikes. Once again, the provisions respecting compulsory arbitration in EPZs were due to be repealed.

With reference to the statement made by the Worker member of Turkey concerning job security, he explained that cases of dismissal

were in practice referred quite commonly to the courts and gave rise to judicial awards. He added that the Constitution provided that no more than one agreement could be concluded for an establishment or enterprise within a given time span. He explained that the dual system of industry versus establishment-level bargaining which had existed before 1983 had led to various difficulties and abusive practices involving the conclusion of successive local agreements under the pretext of industry-wide authorization. He stated, as recalled by the Committee of Experts, that industry-wide bargaining did exist in practice and that collective labour agreements covering a whole branch of activity were concluded in several industries. He cited figures showing that many industries were in fact covered by multi-employer agreements.

With regard to the question of ceilings on indemnities, he noted that the only indemnity on which a ceiling was imposed was severance pay. Under the Labour Act, severance pay amounted to 30 days' salary for each year of service. However, such indemnities could be increased by collective agreement, and in practice many agreements specified 45 or 60 days' pay for each year of service. In order to avoid excess, it had become necessary to impose a ceiling. A similar situation had occurred with bonuses, which amounted to one month's salary. Their number had been increased through bargaining from four to as many as 12 bonuses a year, thereby doubling wages. It had therefore proved necessary to establish a legal limit of four bonuses a year.

Turning to the issue of the right to organize of public servants, he referred to the draft legislation respecting public servants' trade unions and noted that many unions were active among public servants and engaged in collective bargaining in the municipalities. However, the social balance agreements had encountered problems in view of their implications on the state budget. Agreements would be concluded with public servants, but questions still needed to be resolved concerning the financial aspects of such agreements. With reference to the suspension of the strike by rubber workers, he noted that the strike could be postponed for 60 days. The dispute could be referred to arbitration, but the workers concerned had appealed to a higher level court. He was pleased to be able to inform the Committee that the parties to the dispute had now reached agreement. In general terms, although the recognition of the right to organize of public servants was on his Government's agenda, delays had been experienced due to the lengthy process of adopting legislation, especially in cases where there were conflicts of interest. The process had also been delayed by the General Election and the Presidential Election, as well as by the fact that the Government had been engaged in a number of major reforms, including the long-awaited reform of the social security system and the introduction of an unemployment benefit system. He noted in this respect that many changes to the labour legislation had been adopted since 1986, all of which had been a result of the comments and criticisms made by the ILO. He expressed gratitude for the important contribution that the ILO had made to the development of the social system and legislation in his country and was sure that the trend would continue. He mentioned in this respect two pieces of draft legislation which he would refer to the ILO once the response of the social partners had been received with a view to improving the text and when they had been translated. He added that a draft agreement had been reached concerning cooperation between the ILO and his country which covered four strategic areas.

He recalled that his country had a fairly well-developed industrial relations system and hoped that, by improving the legislation respecting trade unions rights and collective bargaining, it would be possible to avoid his Government having to appear before the Conference Committee once again. Finally, he informed the Committee that his country had recently ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and that the instrument of ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), had been submitted to Parliament for its approval of the ratification. Following agreement with the social partners, a further 15 Conventions were being considered for ratification, most of which concerned maritime issues.

The Employer members observed that although certain legal restrictions remained which were not in accordance with the Convention, most of these were not actually implemented and people generally acted as freely as they wished in such areas as collective bargaining. The Employer members believed that, in practice, this situation was to be preferred to cases in which all the legislation was in conformity with the Convention, but was in fact widely violated. They observed that over the years a number of small steps had been taken to bring the situation into greater conformity with the Convention and they expressed the belief that the Government would continue this process. They also considered that the manner in which the Committee had treated this case, which it had examined on 18 occasions over the past 20 years, had contributed to the progress which had been made. On the question of essential services, they recalled that this matter was not covered by Convention No. 98, although the Committee of Experts had developed an interpretation respecting such matters in the context of Convention No. 87 regarding possible restrictions on the right to strike. In conclusion, they recognized the progress which had been made and looked forward to further positive measures.

The Worker members noted the statement by the Government representative that trade unions in Turkey in practice had access to EPZs. However, they emphasized that not one single worker in any EPZ in Turkey belonged to a union or enjoyed the right to collective bargaining. The situation therefore violated the provisions of the Convention. They expressed the hope that the new draft legislation would recognize the full collective bargaining rights of all workers, including public servants, with the sole possible exception of those engaged in the administration of the State. While recognizing the progress that had been made in the application of the Convention since the Committee first examined the case in the early 1980s, they regretted that little progress had been made over the past few years in bringing national law and practice into line with the Convention. They added that no blame should be attached to the social partners in this respect and emphasized that it was the responsibility of the Government to take positive measures, with the technical assistance of the ILO, to achieve concrete progress.

The Committee took note of the statement made by the Government representative, as well as the discussion which took place thereafter. The Committee recalled that this case had been discussed by the Conference Committee on a number of occasions and pointed out once again that the Committee of Experts had been insisting for several years now on the need to eliminate restrictions on collective bargaining resulting from the double criteria for representativeness imposed on trade unions for collective bargaining, the importance of granting workers in the public sector the right to bargain collectively and the need to lift the imposition of compulsory arbitration for the settlement of collective labour disputes in all export processing zones. Recalling the Government's previous indication that legislation was being drafted to promote free collective bargaining between civil servants' associations and state employers, the Committee expressed the firm hope that such legislation would be adopted in the near future so as to ensure that Article 4 of the Convention also applied to this category of workers, with the sole possible exception of public servants engaged in the administration of the State. The Committee urged the Government to take the necessary measures to eliminate the discrepancies in the legislation so as to achieve full conformity with the Convention and asked the Government to supply a detailed report to the Committee of Experts on the concrete measures taken in this regard. It noted that draft bills amending the legislation in force were being discussed with the employers' and workers' organizations or submitted to Parliament. The Committee took note of the draft agreement for cooperation between Turkey and the ILO.

Convention No. 105: Abolition of Forced Labour, 1957

Pakistan (ratification: 1960). A Government representative of Pakistan indicated that Pakistan welcomed the opportunity for a constructive dialogue with the Committee on the implementation of ILO Convention No. 105 in Pakistan. He reiterated his Government's commitment to international labour standards and its appreciation of the valuable guidance and advice provided by the Committee on matters related to the implementation of ratified Conventions. He addressed the observations made by the Committee of Experts on the implementation of the Convention point by point.

With respect to the observations on the Pakistan Essential Services (Maintenance) Act, 1952, the Government representative noted that it applied to those employments or categories of employment which were essential for securing the defence or the security of Pakistan and for the maintenance of such supplies or services which were essential to the life of the community. As the Committee had noted, the application of the Act had been made very restrictive. It was important to note that the Act's application to only six services was a reduction from an initial list of ten categories of establishments or areas of work. The restrictions remaining in only six categories of establishments were truly essential to the life of the community. The Government, in its desire for social dialogue and fairness, had provided for a dispute settlement mechanism for employers and workers in the form of the National Industrial Relations Commission, which was the body for resolution of disputes and ensuring industrial equity. The Act was not only applicable to workers, but also governed the conduct of employers, who were prohibited from terminating or suspending workers. In all cases where employers had terminated or suspended workers, the workers had been reinstated by the Commission, which was the relevant regulatory authority. The primary objective of the Act was to avoid any industrial conflict and breakdown of the establishment or in-

dustry which could endanger the life and welfare of the country. In normal circumstances, the provisions of the law were rarely enforced. Moreover, workers had resigned from and transferred out of jobs in all categories of establishments covered under the Act. Lastly, the Act did not prohibit trade union activities or the certification of collective bargaining agents.

Turning to comments made regarding the Ghazi Barotha Hydro Power project which had been placed under the Act, the speaker noted that it was a 1,450 megawatt project in an advanced stage of construction at a cost of 2.6 billion dollars. He noted that portions of the project had been contracted out in joint venture projects, with the Pakistan Water and Power Development Authority (WAPDA), one headed by an Italian contractor and another by a Chinese contractor. The Government representative stated that the foreign contractors had been facing difficulties in meeting their obligations to the Government because of disturbances which had included work stoppages and vandalism to project equipment. He pointed out that the ensuing delays cost the foreign contractors 50 million rupees per day and that a one-day delay would cost Pakistan 1 million dollars in losses. In order to continue the construction and avoid these unethical practices, the Government reluctantly decided to apply the Act to the project. He stressed that workers were not barred from lawful activities under the Industrial Relations Ordinance (No. XXIII of 1969) during the application of the Act, but that this measure had been a necessary safeguard to ensure the project's completion. He assured the Committee that the application of the Act to the project was a temporary measure.

The Government representative indicated that all observations of the Committee of Experts concerning the Act had been placed before the Tripartite Commission on Consolidation, Simplification and Rationalization of Labour Laws. Headed by a judge from the Supreme Court of Pakistan, the Commission was due to finalize its recommendations by August 2000. The terms of reference of the Commission included, inter alia, the ILO Conventions and Recommendations. He gave an assurance that the Commission's recommendations would be provided to the ILO and to the social partners when finalized.

In respect of the repeal of sections 101-103 of the Merchant Shipping Act, the Government representative noted that a new Ordinance was in the process of being enacted in view of the Committee of Experts' comments. The Ordinance was being drafted with the aim of fulfilling the requirements of the Convention and complying with the comments of this Committee and would be provided to the Committee when finalized. He noted that the provisions of the legislation in question would automatically lapse and hoped that this would end the comments on this point.

Turning to the issue of the repeal of the West Pakistan Press and Publications Ordinance, 1963, he stated that this Ordinance was repealed in 1988. The Government had initiated a dialogue with representatives of the Committee of All Pakistan Newspaper Editors (CPNE) to draft a new law for the newspaper industry. This dialogue led to the enactment of the Registration of Printing Press and Publication Ordinance, 1988. The 1988 Ordinance was repromulgated every 120 days as required under the law. However, it was allowed to lapse in July 1997, in accordance with an agreement between the Government, the All Pakistan Newspaper Society (APNS) and the Committee of All Pakistan Newspaper Editors (CPNE). The Registration of Printing Press and Publications Ordinance, 1996, to which the Committee of Experts had referred had also been allowed to lapse and at present there was no such law in force. It was the endeavour of the present Government to enact a new press law after a consensus had been reached on the matter within the newspaper industry through a process of social dialogue. Consultations with the APNS and the CPNE were under way.

The Government representative stated that the issue of the repeal of sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) had also been placed before the Tripartite Commission on Consolidation, Simplification and Rationalization of Labour Laws, which was due to finalize its recommendations by July or August 2000.

Turning to the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Government representative noted that the comments of this Committee had been brought to the attention of the competent authorities. He reiterated that any punishment imposed under these acts would only be implemented after a fair trial in a court of law, in which the accused was and would be given every opportunity to defend and prove his or her innocence.

The Government representative asked the Committee to note that the Government had made an honest effort to address and comply with the comments of the Committee of Experts. Pakistan was moving resolutely to implement international labour standards, not only making efforts to apply ratified Conventions, but also moving to ratify fundamental human rights Conventions, such as the Worst Forms of Child Labour Convention, 1999 (No. 182). He noted that the tripartite structure was in the process of being strengthened and that the social partners remained actively involved. All observations had been placed before the tripartite partners for their views. The Government had recently organized a conference on employment, human resources development and industrial relations, with ILO participation and attendance by the social partners. The recommendations made by the Conference had been adopted by consensus. In summary, remarkable progress had been made by Pakistan, particularly in combating child labour and he indicated that these efforts should convince the Committee of Pakistan's political will to bring its actions into line with its commitments.

The Employer members expressed surprise at receiving new information from the Government representative that had not been included in its report and asked the Government to put this information in writing to the Committee of Experts. The Employer members noted that this was an old case, but that the issues before the Committee today were the same as those before it in the mid-1980s. While there had been a narrowing of the issues, the basic characteristics that had resulted in the Committee's decision to issue special paragraphs in 1986 and 1988 still persisted. The Committee of Experts had been commenting on these issues for approximately 40 years. There were some positive indications, but the Employer members were not convinced that progress had actually been made.

With regard to the Pakistan Essential Services (Maintenance) Act, 1952, the Employer members noted the restrictions preventing workers from leaving their employment as well as from striking. In light of the Government's statements that the Act was rarely invoked, the Employer members considered that it should be no problem for Pakistan to let the Act lapse. The Employer members recalled that the essential problem was that employees of federal and provincial governments and local authorities were still subject to prison sentences involving compulsory labour.

The second issue involved the Merchant Shipping Act which, according to the Government representative, was in the process of being amended. Noting that the legislative process in all countries took time and that, until the new law was adopted, the problems remained, the Employer members asked the Government representative to indicate when the new law was expected to be adopted. They also suggested that the draft law be submitted to the Committee of Experts for its views.

In respect of the West Pakistan Press and Publications Ordinance, 1963, and the Political Parties Act, 1962, the Employer members noted that the Government apparently had wide discretionary authority to decide to prohibit the publication of views and order the dissolution of associations. If, as the Government representative had stated, the law had lapsed, the Employer members were surprised that the ILO and the Committee of Experts were not aware of this new information. They therefore requested that the Government apprise the Committee of Experts so that it could evaluate the practical effect of this change in the law.

In the context of the repeal of the Industrial Relations Ordinance (No. XXIII of 1969), the Employer members questioned the function of the Tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws. If, as they believed, it was a tripartite advisory body, rather than a legislative body, then additional steps would probably need to be taken and additional time would pass before the legislation in question was repealed and new legislation was enacted.

The Employer members also noted the continual problem of sections 298B(1) and (2) and 298C of the Penal Code, under which members of certain religious groups using Islamic epithets, nomenclature and titles could be punished with imprisonment. In conclusion, there were indications of progress, but the central themes previously addressed by the Conference Committee and the Committee of Experts were still the same. While the Employer members appreciated the Government's positive attitude, they considered that there must also be positive compliance and urged the Government to act with all speed and urgency.

The Worker members declared they were pleased to be able to discuss with the Government of Pakistan the application of Convention No. 105, regarding which it also had several things to say. They would have liked to have the possibility of also discussing the application of Convention No. 87 because they believed that there remained much work to do to bring national law and practice into conformity with the Convention. Although the last time the Committee discussed this case was in 1992, it had on several occasions in past years discussed the problem of forced labour in Pakistan in the context of Convention No. 29. Since 1996 the Committee of Experts had yet again formulated observations concerning the application of Convention No. 105 by the Government of Pakistan. In its latest report, it asked the Government, in a footnote, to provide detailed information to the Conference this year.

The first question concerned Article 1(c) and (d) of the Convention, that is the prohibition against forced labour as a disciplinary sanction and as a punishment for having participated in strikes. The

provisions of the Pakistan Essential Services (Maintenance) Act, 1952, prohibited employees, in several sectors of the public services, from leaving their employment, even by giving notice, without the consent of the employer, subject to penalties of imprisonment that might involve compulsory labour. The Government had affirmed for several years, and in particular in the context of the discussions in the Committee on Application of Convention No. 29, that this law could be applied for only a limited time and that these provisions were necessary to secure the defence or security of the country and the maintenance of such supplies or services that were essential to the life of the community. In practice, however, this law was applied permanently and in situations which in no case could be considered as exceptional. The Committee of Experts had also recalled that in order to be able to invoke the essential services exception, there really had to be a danger for the community and not only a disturbance. The current practice in Pakistan which deprived a great number of its workers from the freedom to terminate their unlimited contracts with a reasonable notice period, was a violation of one of the fundamental labour rights. This was clearly a case of unacceptable forced or obligatory labour. The Worker members had asked that an end be put thereto not only in law but also in practice.

The Merchant Shipping Act was also contrary to Article 1(c) and (d) of Convention No. 105. According to this Act, penalties involving compulsory labour might be imposed on seafarers in relation to various breaches of labour discipline. The 1996 Merchant Shipping Bill retained provisions of this type which were contrary to the Convention. While it was possible, in exceptional situations, to provide that workers could be required to work for a limited period of time and only in situations of danger for the population, the law applicable to seafarers went much further and created unacceptable situations in which seafarers could be returned on board ship by force to perform their duties.

The second question concerned the application of Article 1(a) and (e) of Convention No. 105. The Security of Pakistan Act, 1952, the West Pakistan Press and Publications Ordinance, 1963, and the Political Parties Act, 1962, gave the authorities the power to order the dissolution of associations and to prohibit the publication of views, subject to penalties of imprisonment which might involve compulsory labour, which was a violation of Article 1(a) of the Convention. The Worker members had noted the oral information provided by the Government representative. They requested that this information be transmitted to the Committee of Experts to enable it to examine if the present situation conformed to the Convention. The Government had asserted that religious discrimination was prohibited by law and that there was no such discrimination. In practice, however, there were several examples of serious violations of religious minorities' rights as well as of assassinations and forced labour imposed on certain persons due to their religious beliefs. The legal basis used to sentence persons to a punishment which could be imprisonment accompanied by compulsory labour were sections 298B and 298C of the Penal Code. According to available information at the end of 1999, 30 Ahmadis had been imprisoned only on account of their beliefs. The explanations provided in the past by the Government had been ambiguous. On the one hand, it had stated that religious discrimination was contrary to the Constitution and to Pakistani law, and that there was no such discrimination in practice. On the other hand, it had declared that it had taken legislative and administrative measures to limit the exercise of religious practices similar to Islamic practices because, according to the Government, these represented a threat to security and public order. The Committee of Experts recalled that the Convention proscribed sanctions on peaceful expressions of religious beliefs or which were addressed, more generally, or exclusively, to certain social or religious groups (irrespective of the breach committed). The Worker members supported this view and emphasized that the Government should, without further delay, put an end to existing discriminations, in particular, in view of the scope of these discriminations which could, as demonstrated, result in the application of forced labour.

The third question concerned the application of Article 1(c) of the Convention. The Industrial Relations Ordinance of 1969 provided that, whoever commits any breach of any term of any settlement, award or decision, may be punished with imprisonment which may involve compulsory labour. More than ten years ago, the Government had indicated that a Bill to amend the Industrial Relations Ordinance had been presented to the National Assembly and that it was proposed to replace the sanction of imprisonment with what was called "simple imprisonment". The Worker members requested information on the status of this Bill.

They stated that the Pakistan case was a very serious case. It concerned, in fact, not only a single legal provision or a single factual situation in violation of Convention No. 105, but a whole series of violations in law and in practice that the Committee of Experts and the Conference Committee already for several years had declared should cease. The Government should seek solutions together with the social partners. The ILO should provide the Government with technical assistance in order to bring the law into conformity with Conventions ratified, in particular with Convention No. 105, as the Government had been stating for quite some time.

The Worker member of Pakistan noted that the Worker members had spoken at length on the issues concerning Pakistani workers. He recalled that Pakistani workers had brought a complaint against the Government and was grateful that the Committee on Freedom of Association had requested the Government to comply with its obligations. The former Government had restricted the fundamental rights of workers, which led them to boycott the tripartite consultation process. A more positive climate now existed and the Government had assured Pakistani workers that the Industrial Relations Ordinance was likely to be amended by restoring fundamental trade union rights to 140,000 WAPDA workers in line with the conclusions of the Committee on Freedom of Association of November 1999. He requested the Government to expedite this adoption and to look into other violations of ratified Conventions, including Convention No. 87.

In respect of the Pakistan Essential Services (Maintenance) Act, 1952, it should only apply to activities whose interruption would endanger the life, personal safety or health of persons. The Government should amend this legislation in accordance with the Committee of Experts' comments. With regard to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969), the Government should immediately amend these provisions as requested by the Committee of Experts, instead of awaiting the recommendations of the Tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws. With respect to the Merchant Shipping Act, the West Pakistan Press and Publications Ordinance, 1963, and the Political Parties Act, 1962, the Government should provide full details in writing to the Committee of Experts. As to the matter of certain religious groups he stated that Pakistani workers believed in tolerance; however, there were certain elements that exploited their religious beliefs instead of promoting democratic rights. However, he emphasized that no one group should be singled out. He considered that the Government should conduct further inquiries into this problem.

In conclusion, he considered that there was evidence of positive social dialogue and political will on the part of the Government. The speaker hoped that the Government would share his belief that workers should not be deprived of their rights to collectively bargain and organize on the grounds that these rights interfered with the interests of multinationals. The Government should reach an agreement with workers through social dialogue instead of imposing the restrictions cited in the Committee of Experts' comments. Noting that Pakistani workers shared the Government's goal of economic and social development, he expressed the hope that the Government and the social partners could establish and maintain a constructive social dialogue.

The Worker member of Italy, responding to the Government representative's statements regarding the Ghazi Barotha Hydro Power Project, pointed out that the main obstacles to the development of the project were the delays caused by the Water and Power Development Authority (WAPDA). These included delays in expropriating necessary land, and delays in the payment of millions of dollars from the World Bank which stayed in the hands of WAPDA instead of being passed on to the contractor for the project. In fact, just before the Government's application of the Pakistan Essential Services (Maintenance) Act, 1952, to this project, the contractor had declared its intent to cease construction due to problems in its relationship with WAPDA. Another obstacle to the project was the contractor middlemen, who continuously threatened the worker representatives and the trade union. The Italian contractor had also refused to negotiate with the workers for approximately one-and-a-half years. In these circumstances, the company and WAPDA asked for application of the Act. Subsequently, a lockout was imposed for a number of days while the leaders of the trade union were arrested and left in jail for over one month. The National Industrial Relations Council reinstated the workers, but additional anti-union initiatives took place on the company's behalf, which included the suspension of the Pakistani union as bargaining agent. The speaker noted that, thanks to the collaboration between the Italian and Pakistani trade unions, an agreement was reached to reinstate the union as bargaining agent and to develop joint industrial relations training with the union representative of the project. Noting that a dialogue had been initiated to reach an agreement between management and the workers, she indicated that the Italian and Pakistani unions welcomed this new contractor policy and considered that it would form the basis for sound industrial relations in the future.

She stated that Convention No. 105 was continuously violated by public and private employers in Pakistan in various sectors. With regard to the Pakistan Essential Services (Maintenance) Act, 1952,

she noted its application in state enterprises, including oil and gas production, electricity generation, airlines, ports and EPZs. She characterized the Act as an undemocratic law which violated fundamental trade union rights established by the ILO core Conventions and the UN Declaration of Human Rights. The Government had arbitrarily applied the Act to productive plants or building sites at the request of the employers. The Act had been applied and then reinstated repeatedly with regard to the Ghazi Barotha Hydro Power Project due to pressure from contractors. She asserted that the Act was not used to protect state security, but to suspend the implementation of labour legislation and to deny workers the right to organize and bargain collectively to defend their interests against company abuses. The Act had also been applied in regard to the Daewoo project, where its application had been requested and granted for purposes of "social peace". The union had been forced into a lengthy appeal process in the labour courts, to no avail. The Act had also been applied in various production plants, including plants producing chemicals for agricultural and for military use.

Turning to the issue of bonded labour, she noted that there was widespread use of debt bondage in Pakistan, including in the agricultural sector. This practice violated not only Convention No. 105, but also Conventions Nos. 138 and 182. The strong power of landlords and the attitude of national and local authorities — who knew of violations, but did not intervene even after receiving complaints — posed the major obstacles. She cited Amnesty International's comments that bonded labourers, including children, were often under the control of powerful figures such as landlords, many of which occupied high positions in the Parliament or in provincial institutions and held sway over local officials and police. She urged that action be taken to end bonded labour in cooperation with the social partners, other organizations and with ILO assistance.

The Government representative expressed his appreciation to all members of the Committee for their comments. In response to the statements made by the Worker member of Pakistan, he noted that his Government believed in unimpeded social dialogue and shared the common goal of social and economic development with all the Pakistani trade unions. He noted that the Worker member of Pakistan had recently complimented the Government for restoring workers' rights to a large trade union.

Responding to the comments of the Worker member of Italy on the issue of bonded labour, he stressed that Pakistan was committed to eliminating child labour, bonded labour and debt bondage in the country. The Government wished to progressively eliminate all forms of child labour and had recently promulgated a plan of action that would specifically address the various forms of child labour in Pakistan. He noted that this problem was linked to poverty, and was a problem which had been inherited by the current Government. The Government had established a benevolent fund of 100 million rupees for the education and rehabilitation of bonded and child labourers and had also launched a project whose objectives were to utilize multiple strategies to eliminate child labour.

In response to the statements made by the Employer members, the Government representative confirmed that he would submit in writing to the Committee of Experts all statements made in this Committee.

The Worker members expressed the wish that the oral information provided by the Government representative be examined by the Committee of Experts. They declared they were very concerned by this case as it concerned not only a single contradiction with the provisions of the Convention, but a whole series of laws and practices allowing for recourse to forced labour. A prerequisite was to have the political will to improve the situation. Technical assistance from the ILO could also help the Government to bring law and practice into conformity with the provision of Convention No. 105. A major point in the statement made by the Government representative was the importance given to social dialogue and tripartism. It was in fact essential that solutions to violations of the Convention be examined jointly with the social partners.

The Committee took note of the information supplied by the Government representative and of the discussion which ensued. It noted that this was a case that had been examined by the Committee of Experts for nearly 40 years, and which had been discussed in the Conference Committee several times over the past years. The Committee regretted that very little improvement in compliance with the Convention had been achieved in the areas pointed out by the Committee of Experts over many years, including in particular the legal restrictions on termination of employment and on striking, as well as on the expression of certain political and religious views, enforceable with sanctions of imprisonment involving compulsory labour, and imposition of penalties involving compulsory labour for breaches of labour discipline by seafarers. The Committee noted the Government's explanation concerning various measures envisaged or undertaken. It hoped that all of this information as well as further details and copies of the new legislation would be provided in the Government's next report to the Committee of Experts. The Committee urged the Government to take, without delay, all the necessary measures to bring the law and practice into conformity with the Convention on all the issues pointed out by the Committee of Experts. It reminded the Government of the possibility of requesting technical assistance from the ILO.

United Republic of Tanzania (ratification: 1962). A Government representative reaffirmed her country's commitment to its obligations under the ILO Constitution and its will to comply with the Conventions which it had ratified. However, she pointed out that the United Republic of Tanzania was a developing country which suffered from resource constraints, including a shortage of trained personnel, which made it difficult to fulfil its obligations promptly.

With reference to Article 1(a) of the Convention, concerning punishment aimed at censoring political or ideological views opposed to the existing system, the Committee of Experts had commented on the Newspaper Act, 1976, the Societies Ordinance and the Local Government (District Authorities) Act, 1982. She noted in this respect that, following the establishment of multipartism, there had been a process of political liberalization in her country, with the result that contrary views were not generally censored in practice with criminal penalties, save for those which fell under accepted exceptions to the Convention. With regard to the question of why this legislation continued to exist, she reported that the legislation had long been identified as being among the 40 legislative texts which were unconstitutional on the grounds that they were contrary to human rights. Although the above legislation was before the Tanzania Law Reform Commission for amendment, the review process was protracted due to resource constraints.

Nevertheless, a new approach had been adopted which might hasten the process of reforming laws which contravened ratified ILO Conventions. Funding had been secured for a labour law reform project, which would cover amending traditional labour legislation and other laws which impinged on labour issues, such as those which contravened ILO Conventions. Moreover, she offered sincere apologies for the failure of her country to submit this information and other legislative texts to the Committee of Experts. This had been due to inadvertence and she undertook to provide the texts in question within one month.

With regard to Article 1(b), concerning forced labour for purposes of economic development, she noted that the provisions criticized by the Committee of Experts were sections 89(c) and 176(9) of the Penal Code. She stated that section 89(c) sought to punish those who dissuaded others from participating in self-help schemes. She emphasized that, although it did not punish persons who themselves refused to participate in such schemes, even if it had done, it would still have been in conformity with the Convention because in practice the self-help schemes fell under the exceptions to the definition of forced labour set out in Articles 2(2)(d) and 19(1) of Convention No. 29. Moreover, she apologized for not having submitted cases concerning the application of these sections to the Committee of Experts. This failing had been partly due to resource constraints and partly to the difficulty in accessing the records of lower courts throughout the country, which was where such cases were heard.

With regard to Article 1(c) concerning the use of forced labour as a means of labour discipline, the relevant provisions were sections 176 and 284 of the Penal Code, as amended by the Economic and Organized Crime Control Act, 1989, as well as the Merchant Shipping Act, 1967, she explained that these texts had to be seen in the special circumstances of the country when they had been adopted. At that time, her country had had a socialist economy, in which the major commercial and business entities had been state-owned or run as parastatal organizations. Such enterprises had been mismanaged and losses were sometimes incurred in circumstances which seemed to stem from deliberate acts of sabotage and plunder. The aspect of negligence had been introduced because it had been difficult for the investigative machinery to prove that the acts had been wilful. In the light of the current trend towards privatization and the State divesting itself from the operation and management of such enterprises, these provisions would soon be rendered redundant. Nevertheless, they were among the texts which were due to be reformed. She added that the Merchant Shipping Act was a relic of the colonial past which only remained on the statute books due to the slowness of the reform process.

With reference to Article 1(d) concerning the use of forced labour as a punishment for having participated in strikes, she once again apologized for the failure to provide the Committee of Experts with the Industrial Court Act, 1967, as amended. Under the Act, strikes were legal and elaborate procedures were laid down which had to be followed before employees could call a strike or before employers could lock out their employees. In conclusion, with regard to Zanzibar, as indicated in previous reports, consultations were continuing with the Government of Zanzibar and the Committee of Experts would be informed as soon as results had been achieved.

The Worker members thanked the Government representative for a detailed report which was very helpful in improving understanding of the situation with regard to the difficulties in the application of the Convention in the United Republic of Tanzania. However, they noted that the observation by the Committee of Experts was of a very general nature and would not help anyone who was not familiar with the case to understand the issues involved. They emphasized that, although the ILO supervisory system might have many weaknesses, there was nothing superior to it throughout the United Nations system in the field of human rights instruments, as acknowledged by human rights specialists. The supervisory system enjoyed great legitimacy and had proven to be effective, based on dialogue and cooperation and moral sanctions. However, it was also a fragile and vulnerable system and it was remarkable that it had worked so well for 80 years. The system was dependent on so many aspects which, although enshrined in the Constitution, were of a voluntary nature. The Conference Committee had developed many devices to induce governments to improve their implementation of ratified Conventions, including encouragement, criticism, technical assistance and direct contacts. Serious cases of non-compliance over a long period of time were placed in a special paragraph of the Committee's report to the Conference. Rather than a sanction, this was the most visible method available of communicating the special concerns of the Committee to the Conference. Such special paragraphs were often effective in achieving progress, since most governments did not appreciate being mentioned in this way. Nevertheless, if the governments concerned did not react in any way, then the system did not work as it should. This was the case with regard to the application of the Convention in the United Republic of Tanzania. The Committee had been examining the case for decades and had mentioned it in special paragraphs repeatedly. However, out of a fear that the very frequency of such mentions might blunt this instrument, the case had not been included in a special paragraph for the past decade. The Worker members emphasized that this had not been due to any improvement in national law and practice.

The basic problem consisted of the fact that the legislation was of such a general nature that it gave wide discretionary powers to the authorities in mainland Tanzania and in Zanzibar. Some examples included the power of the Government to prohibit activities in the area of freedom of association and freedom of assembly when it considered such a prohibition to be in the public interest or in the interests of peace and order, or of public health. People engaged in such activities could be imprisoned and obliged to perform labour. Another example consisted of persons who were not performing their job properly, who could also be imprisoned and forced to perform labour. Workers who were employed by specified authorities and who caused financial loss or damage to their employer through negligence or misconduct could be subjected to similar sanctions. Forced labour could also be imposed for breaches of discipline by seafarers. Compulsory arbitration could also be imposed in the event of labour disputes, making it possible to declare all strikes illegal and to imprison the strikers and force them to perform work. In this respect, as in previous years, the Government representative had endeavoured to explain that restrictions were not placed on political activities and that the provisions were only used to curb public unrest and disorder. The Government had also been stating for many years that new legislation bringing the situation into line with the Convention was forthcoming and that there had been few convictions. However, despite the repeated requests by the Committee of Experts, no information had been made available on the implementation of the law in practice.

The Worker members welcomed the appearance of goodwill demonstrated by the Government representative and the fact that no attempt had been made to disagree with the findings of the Committee of Experts. The Government representative had also said that a new approach was being adopted. In this respect the Worker members appreciated the difficulties arising out of the country's low level of development and the need to coordinate the issues raised with other authorities, such as the Ministry of Justice and the Interior Ministry. Nevertheless, major questions remained. The good faith of the Government remained to be proven; the obstacles which had, and which continued to prevent the Government from reacting appropriately to the recommendations of the Committee of Experts and the Conference Committee required clarification: and the Government's want and need of ILO assistance to improve the situation was also to be demonstrated. In view of the great difficulty in achieving any progress in the case, the Worker members proposed that the Government representative should be invited to propose the appropriate means of addressing the very serious issues under review.

The Employer members noted that the observation by the Committee of Experts on the case did not contain much information concerning the actual facts of the case or the specific violations of the Convention. However, they observed that in her statement the Government representative had admitted the existence of violations of the Convention and had recognized that the process of legislative reform was too slow in meeting the requirements of the Convention. They also noted the existence of draft legislation which would repeal all the provisions which were incompatible with the Convention. However, the Committee of Experts' observation referred to the various laws without explaining their content and did not indicate precisely the provisions which would be repealed by the draft legislation. The Employer members emphasized that, while the facts of the case had not been presented clearly by the Committee of Experts, it was clear that numerous laws needed to be reviewed and amended. Finally, they endorsed the suggestion by the Worker members that the Government representative should be invited to indicate precisely the concrete measures envisaged by the Government to meet the requirements of the Convention. They also expressed the view that the case should be reviewed by the Committee on a more regular basis.

In response, the Government representative emphasized that account needed to be taken of the great difference between the situation before 1990, when the country had had a socialist economy and a single-party system, and its development since 1990 to a multipartite State with a market economy. While the political will might not have existed before 1990 to remedy the problems with regard to the application of the Convention, the situation was now very different. Some 40 legislative texts had been identified as breaching human rights, including the rights set out in the Convention. The reform process, although extremely slow, had recently produced the Trade Union Act, 1998, and the Employment Act, 1999, which repealed legislation that had been criticized by the Committee of Experts. Moreover, the labour law reform project, for which funding had been secured, was designed to review both labour legislation and other laws which impinged upon labour issues. This represented a fundamental ideological shift, which had resulted in the recognition that many legal texts needed to be amended. She indicated that ILO support and assistance for the project on the harmonization of labour law in the east African subregion would be welcome.

The Worker members expressed gratitude for the further information provided by the Government representative. However, they regretted that she had not given any idea of what action the ILO could take to help bring about change. They observed that the process of reforming the legislation had been going on for many years. Moreover, they questioned whether a subregional exercise to harmonize labour laws would have any beneficial effect on the application of the Convention if the national law had not been brought into compliance with the Convention.

The Committee noted the explanations provided by the Government representative, as well as the discussion that took place in the Committee. The Committee had already urged the Government in 1992 to eliminate the discrepancies between national legislation and the Convention, as had the Committee of Experts for a number of years. The Committee noted the assurances that a political will existed to apply the Convention, and urged the Government to adopt in the very near future the necessary measures to ensure that this fundamental Convention, ratified almost 40 years ago, was applied in both law and practice. It noted that new steps were being taken to accelerate the necessary amendment of the relevant legislation. It called upon the Government to supply detailed information on the progress made in bringing the legislation into conformity with the requirements of the Convention, to supply other information sought by the Committee of Experts, including copies of the various legislative texts which had been requested. The Committee reminded the Government that it could, if it so desired, request the technical assistance of the Office.

The Government representative added, in conclusion, that the labour law reform project would include legislation other than labour laws which impinged upon the application of the Convention. This reform project had already been commenced in her country. The project to harmonize labour legislation in the east African subregion would follow.

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

Brazil (ratification: 1965). A Government representative thanked the Committee for the opportunity to apprise it of the efforts her Government had made in the battle against all forms of discrimination in employment and occupation. In 1995, she recalled, the Government acknowledged the existence of discrimination and requested technical assistance from the ILO to apply more fully the various provisions of the Convention through legislation and in practice. The national tripartite seminar it organized at the time was a landmark in the struggle against discrimination in Brazil. Significant steps were taken, successfully, to involve employers' and

workers' organizations in a study of the issues with remedial action in view. By way of follow-up in 1997 a national campaign entitled " Brazil, gender and race" was launched with ILO assistance. From the outset, the campaign gave widespread publicity with tripartite support to the principles embodied in the Convention. To show how widely information on the Convention had been disseminated the Government representative pointed out that at a recent mass demonstration by peasants under the banner "The land of Brazil cries out" one of the peasants' demands was the application of Convention No. 111. News of the Convention had been spreading widely and was already reaching rural areas. The Government representative acknowledged that there was still an untold number of problems associated with discrimination and that the problem, which was among the worst violations of human rights, could not easily be resolved. One problem was that many cases turned on individual allegations involving a single worker and employer, and these proved difficult to substantiate. The solution might lie in heightened awareness-raising activities. The Government representative referred to practical action undertaken as a consequence of efforts to promote the Convention. This included the establishment since 1998 of specialized anti-discrimination centres in various state labour delegations, which represent the federal Ministry of Labour in each of the 27 States in the Federation. To date, such centres had been set up in 15 of the 27 state delegations, and each State was soon to have a centre of its own. Each of the centres was competent to receive complaints alleging discrimination on grounds of race, sex, physical deficiencies, sexual preference and health. When a complaint came in, officials of the centre conducted an investigation into the facts, studied the case and tried to work out a solution; when no solution was possible the case was sent on to the Attorney-General for appropriate judicial action. From January to March 2000 the centres received 80 complaints alleging discrimination, most of which ended in a settlement. The complaints concerned discrimination on grounds of gender (42 per cent), service-incurred injury or illness (29 per cent), health (12 per cent), age (5 per cent), disability (4 per cent), race or colour (1 per cent), and other factors (3 per cent). It was important to note that black women as a group were more exposed to discrimination than any other. There had also been 522 complaints against discrimination in the workplace affecting HIV-infected workers and AIDS victims, of which 513 had been resolved.

The Government representative also referred to the establishment of a database registering cases of discrimination and potential solutions, but the project had encountered certain obstacles, for which efforts were under way to overcome. He provided further information on practical steps and information activities undertaken, among them the training of 6,000 teacher-trainers on matters of discrimination and the holding of various seminars including several attended by ILO experts. The Government of Brazil had every intention of continuing to provide information for the supervisory bodies and of benefiting from ILO technical cooperation until such time as the last remaining vestige of discrimination in Brazil could be eliminated.

The Worker members stated that the problem of discrimination in Brazil had been the subject of discussion in this Committee in 1993, 1994 and 1995. Various points had been debated: discrimination in employment, including wage discrimination relating to sex or race; the obligation for women to produce a certificate of sterilization prior to employment; and the lack of national policy concerning equality of treatment. In its most recent observation, the Committee of Experts noted with interest the numerous initiatives undertaken by the Government, both in terms of legislation and practice. Moreover, the Government representative had provided additional information on this subject. The Committee of Experts, however, noted in its most recent observation that the information provided in the report concerning the situation of employment was not sufficiently detailed and did not enable it to evaluate the progress made in the implementation of the Convention. Concerning discrimination on the basis of race, colour or ethnic origin, the Committee of Experts had noted reports concerning the persistence of profound structural inequalities endured by the indigenous population, the black and mixed-race communities despite the measures taken by the Government. Concerning discrimination based on sex, the reports of the United Nations Human Rights Commission indicated that women continued to face *de jure* and *de facto* discrimination, particularly concerning access to the labour market. The Committee noted with interest Law No. 97/99 which prohibited the publication of discriminatory employment advertisements as well as the termination or refusal to hire, promote or train people based on sex, age, race or family status. Information on the implementation of this law, including the measures envisaged to set up policies on equality of opportunity and treatment are necessary. Likewise, further information was requested concerning the effective implementation of laws prohibiting employers requiring certificates of sterilization or any other legislation adopted to fight against discrimination. Evaluation of the implementation of Conventions concerning discrimination was only possible if the information provided by the Government was reliable and sufficiently detailed.

The Worker members remain very concerned by the persistence of discrimination of which indigenous people, blacks and persons of mixed race are victims; the position of women in the labour market; discrimination in the fields of education, guidance and professional training; and access to the labour market of underprivileged young people, as well as children known as "street children". In conclusion, the Government must continue to deploy all efforts to assure the effective implementation of the Convention, in terms of legislation and practice, and to formalize anti-discriminatory policies. In addition, the Government must provide reports which are sufficiently detailed and of such quality as to enable efficient examination of the implementation of the Convention.

The Employer members indicated that the Committee discussed this case three years in succession in the 1990s — 1993, 1994 and 1995. This case had previously had three serious elements: employment discrimination based on race and sex including salary discrimination; the absence of any national policy on equal opportunity; and the fact that the employer was allowed to require female applicants to obtain sterilization certificates. In 1995, there was a breakthrough in that the Government agreed to the establishment of a Technical Advisory Committee and enacted Act No. 9029 that prohibited employers from requiring a medical sterilization certificate from women. In 1996, the Government launched a national programme for human rights that broadly provided for equality for women, blacks, the disabled and indigenous people. In 1997, the Committee of Experts noted the progress being made in both law and practice. In 1999, Brazil adopted Law No. 97/99 which amended the Consolidated Labour Act to include prohibitions of discrimination on the basis of sex, age, colour and family status. This year the Committee of Experts had noted other positive actions taken by the Government including public awareness programmes. But on an overall basis, the Employer members considered that this Committee did not have a clear picture of the effects of all of these measures. Moreover, the Committee of Experts had noted that certain indigenous communities continue to suffer from deep structural inequalities. The Employer members were also surprised by the fact that only 80 complaints had been filed within a three-month period, alleging discriminatory practices. In light of the size of the labour force, the Employer members considered this number of cases to be extremely low. This Committee therefore needed information that non-discriminatory practices were taking hold. Hence the Government needed to provide promptly a report as requested by the Committee of Experts, assessing whether there had been concrete progress and the statistical data requested by the Committee of Experts under point 9 of its report.

The Worker member of Brazil indicated that the application of Convention No. 111 had been the subject of comments since 1991 by the Committee of Experts and was taken up by the Conference Committee in 1993, 1994 and 1995. The case had come up for discussion once again because of continuing breaches of the Convention. Discrimination in employment and occupation in Brazil left no room for doubt. In 1993 the Government representative himself acknowledged the existence of discriminatory practices going all the way back to the colonial period. Since then, a number of laws designed to combat discrimination had been enacted. Despite progress in legislation, however, discriminatory practices against women, blacks, Indians and sexual minorities had, sadly, remained commonplace. Women, for example, were still being asked to submit evidence of sterilization before recruitment and were even subjected to medical examinations.

Statistical data from official bodies were worth mentioning. In six of Brazil's richest metropolitan areas women's average earnings amounted to only 67 per cent of men's. The wages of blacks were 60 per cent of what non-black men and women received. Women were more exposed to social exclusion than men; 32.2 per cent of economically active workers without the benefit of a contract of employment were women whereas the proportion of working men without contracts was 24.9 per cent. Similarly the unemployment rate in major urban centres was 8 per cent for women as opposed to 6.9 per cent for men. The black population was much harder hit by unemployment: although it represented 41.7 per cent of the economically active population according to one study carried out in five urban areas, 50 per cent of unemployed workers were black. The perverse affects of discrimination based on sex and race were evident in respect of unskilled employment: 19 per cent of working women (some 5 million women) laboured in domestic employment for a paltry wage. In domestic employment there was evidence of double discrimination since 56 per cent of domestic women workers were black. They had scant education, one to three years' schooling, and their monthly pay came to a mere US$41. Blacks in the active population held positions requiring the lowest skills levels

and seldom rose to management positions in either the private or public sectors.

The Committee of Experts regularly requested the Government to supply information on the practical effects of newly adopted legislation in keeping with the obligation laid down in Article 3(f) of the Convention on the reporting of "results secured". The reason why the results secured by official policies and legislative measures were so meagre was that despite the magnitude of the problem the Government's policy measures were purely "cosmetic". The holding of national seminars attended by 100 participants or the distribution of explanatory leaflets seemed derisory for a population of some 160 million. However necessary, such action could only be inadequate. The effective application of the Convention called for active policies targeting the integration of blacks, women, Indians and sexual minorities by such means, for example, as establishing quotas in the public service or subordinating public aid for private enterprises to compliance with anti-discrimination rules. Whereas state-controlled enterprises should be setting an example, the first case of discrimination on which the Supreme Labour Court had ruled concerned a publicly owned enterprise. Employers should also be encouraged by the Government to follow an active non-discrimination policy, notably through the system of vocational training which they ran. The system should finance vocational training designed to integrate those who had been excluded on grounds of race or sex.

As to the question raised by the Committee of Experts concerning the paucity of complaints alleging discrimination despite an impressive anti-discriminatory legislative arsenal, the Worker member pointed out that Brazil's labour legislation was one of the most flexible in the world and allowed employers to dismiss workers without giving any reasons. Dismissed workers were left to ask the courts for awards of moral and material damages, which proved difficult to substantiate.

In conclusion, Brazil, it was plain, had still failed to apply Convention No. 111, particularly Article 3(f). The Conference Committee should therefore request the Government to communicate detailed and specific information on the practical results of the action it had undertaken.

The Employer member of Brazil underlined the positive steps taken by the Government to ensure and promote the application of the principles embodied in the Convention. She said that the Government had done an excellent job of disseminating information and raising the public's level of awareness with a view to eliminating discriminatory practices in employment and occupation. She dwelled on the Government's achievements in terms of legislation enacted and the organization of various nationwide events. Her Confederation, she observed, had taken part in numerous events organized by the Government to promote and effectively apply the principles in the Convention.

The Worker member of the United States noted that Brazil and the United States were remarkably similar in that both nations were highly diverse and multicultural, both nations had emerged from systems of colonialism and slavery, and that both had been shaped by peoples of African, indigenous, Asian and European origins. Despite these similar origins, there were also significant differences. For example, Brazil in its post-slavery period had never maintained a regime of state-sponsored and state-enforced segregation and discrimination which had existed in some parts of the United States. Nevertheless, he recalled that both the report of the Committee of Experts and the admission by the Brazilian President Fernando Henrique Cardoso in 1994 that the notion of Brazilian racial democracy was really a myth, suggested that discrimination in employment remained a major problem in Brazil and called into question Brazil's effective compliance with Convention No. 111.

He noted that the report of the Committee of Experts referred to certain measures which the Brazilian Government had taken to address the discrimination crisis. However, the experts explicitly acknowledged the failure of the Brazilian Government to provide them with concrete information showing what substantial impact these measures had actually produced on employment discrimination, thus falling short of the requirements of Article 3(f) of the Convention.

Despite this lack of information, a more complete analysis of Brazilian employment discrimination could be constructed from other sources. He recalled a 1999 study prepared by Brazil's Inter-Union Department of Social Economic Studies (DIEESE) and the Inter-American Trade Union Institute on Racial Equality (INSPIR) which was funded by the AFL-CIO and three Brazilian trade union centres. The study concluded that black workers, on average, earned only 60 per cent of the income of their non-black counterparts, that black workers were disproportionately over-represented in the unskilled job sector, and that black workers were disproportionately under-represented in managerial positions and over-represented in the unprotected informal sector. The DIEESE/INSPIR study concluded that "no other factor, other than direct use of discriminatory criteria based on skin colour, can explain the systematically unfavourable employment situation for black workers …". He also recalled the study prepared by the Brazilian Institute of Geography and Statistics which concluded that Brazilian women, on average, earned only 67 per cent of the income earned by their male counterparts.

Given the above, he suggested that the Government promote a policy of encouraging anti-discrimination clauses in collective agreements by urging employers, trade unions, and the labour court system to incorporate such measures in the collective bargaining process and in the registration of collective agreements. Furthermore, the Brazilian Congress and courts, pursuant to the 1988 Constitution, should develop the necessary mechanisms in law and equity, including affirmative action, to begin to remedy systematic discrimination. Finally, the Brazilian Government should endeavour to harmonize its legislation to avoid contradictions. For example, he pointed out, Brazil's 1998 law which established the fixed-term and temporary contract system undermined job stability for women who exercised their maternity leave rights, thus aggravating the disparate treatment between women and men in the labour market. Recalling Brazilian subterfuges which had been used to hide slavery from the English in the nineteenth century, he urged the Brazilian Government to root out discrimination, as opposed to merely covering and camouflaging it.

Another Employer member of Brazil spoke of various government-organized seminars, meetings and forums on the topic in which he had taken part. These events were characteristically tripartite and seldom gave rise to criticism. As to the system of ongoing training, which the employers managed, it was to be noted that workers' representatives also sat on the governing bodies of the various training institutions. The Government's productive and continuing efforts to combat discrimination were worth emphasizing.

The Worker member of Singapore expressed her grave concern that discrimination continued against women and persons of different races, colours and ethnic origin in Brazil. She noted that there appeared to be legislation prohibiting discrimination and that a human rights programme had been established to promote equality. She also noted the establishment of centres for the prevention of discrimination at the state level, which involved representatives of the Government, trade unions, and minority and women's groups. However, she stated that there was insufficient information on these activities and the number of complaints and successful prosecutions that had been registered to know whether such legislation and programmes were effective. She further noted that the cause of discrimination against women and ethnic minorities was usually much deeper and embedded in the values and norms of a society. She therefore urged the Government to send a strong signal to the public through clear policies and effective programmes aimed at eliminating discrimination. She recalled that Convention No. 111 was one of the core Conventions and that its objective was to protect the interests of vulnerable groups who, without strong intervention from the governments, would seriously suffer from discrimination in employment and training.

In conclusion, she urged the Government to provide further information on the treatment of complaints and cases regarding discrimination, on the number of successful prosecutions under current legislation, and what measures had been taken to inform workers, employers, women, and ethnic and racial minorities of government efforts to combat discrimination. She recalled that it had taken the Government seven years to introduce the measures discussed today, and she hoped that it would not take another seven years to be informed of further progress.

The Government representative underlined, in response to several comments of the Employer members in relation to the low number of complaints regarding discrimination, that the statistics she had provided referred exclusively to complaints presented to the 15 centres specialized in combating discrimination in the three-month period between January and March 2000. She indicated that she had at her disposition a detailed report with statistics but that she wished to add further information. She stated that the next report would include this information and that it would add statistics which would respond to the questions which had been raised during the discussion. She recognized that there was still much to be done and that the Government was still learning to make progress in the field of human rights.

The Worker members stated that the information before the Committee confirmed the persistence of significant levels of discrimination in practice. The absence of instruments of evaluation to permit the drafting of detailed reports of good quality was a big handicap when it came to measuring the impact and concrete effects of the Government's various programmes and policies. If, as the Government indicated, such data existed then it should take the necessary steps to produce it in its next report for the Committee of Experts to evaluate progress made in applying the Convention.

The Committee thanked the Government for the detailed oral information it provided, and noted with interest the discussion which followed. It recalled the serious violations of the Convention that had previously been noted by the Committee of Experts and this Committee, and the progress in tackling these problems, with the assistance of the Office, that had been noted by the Committee of Experts. It also noted with interest the numerous programmes and activities that had been undertaken by the Government to promote human rights in the country, in particular equality on the grounds set out in the Convention, while noting that a number of problems still exist in practice. The Committee requested the Government to provide detailed information on the concrete and tangible results achieved through this action, including reports, studies and statistical data and other indicators, particularly with regard to any changes in the economic participation rates of women as well as different racial or ethnic minority groups and indigenous peoples. It encouraged the Government to assess the progress made, and to provide detailed information in its next report to the Committee of Experts in this regard.

Islamic Republic of Iran (ratification: 1964). A Government representative reaffirmed the commitment of her Government to the application of the Convention, the provisions of which were in conformity with the principles and objectives of her Government. The Government recognized its obligation to promote and realize the principle of non-discrimination and had endeavoured to provide complete and substantive reports to the Committee of Experts, containing all the available information requested.

She recalled that last year during the Committee her Government had stated that it would invite a mission from the ILO to come to the Islamic Republic of Iran to discuss with various parties any issue that it wished regarding the application of the Convention. Her Government had also responded positively to the views expressed by the Worker members and other members of the Committee and had agreed and accepted the terms of reference of the mission as indicated by the ILO in their entirety. The Government had cooperated fully and provided all the necessary assistance and facilities requested for the mission. In an extensive work programme, the mission had discussed various issues regarding the application of the Convention and matters raised in the supervisory bodies in their meetings with various government officials, the judiciary, several NGOs and minority groups. As a result of the knowledge and experience of the mission members, it had been possible to hold very useful in-depth dialogue on all the issues raised, as indicated in the report of the Committee of Experts. She added that a national tripartite seminar would be held in her country in the next few months with ILO cooperation on the further implementation of the ILO's fundamental standards.

With respect to the comments of the Committee of Experts, she noted the reference to the existing national dialogue in the Islamic Republic of Iran on the issues covered by the Convention and the commitment in the governmental structure towards removing all possible obstacles to the application of universally recognized human rights standards. It had also referred to the national institutions set up to examine and promote human rights. She emphasized in this respect that the national environment in which the Convention was applied was of great importance. The existence of a lively civil society and a wide range of governmental and non-governmental institutions to ensure respect for the rights of citizens, including non-discrimination, was the best mechanism for the materialization of these rights. Any comments on the application of the Convention therefore needed to take into account the degree of social and civil development of the national environment, as had been done by the Committee of Experts when it noted the expanded activities in her country in the area of human rights.

With regard to discrimination on the basis of sex, the Government had received support from Parliament in adapting the present Five-Year Development Plan, under which legislation was introduced to promote equal opportunities and encourage the higher participation of women in employment and education, as noted by the Committee of Experts. In this respect, the credit should be given to Iranian women who had made the effort to achieve the breakthrough in their levels of participation in social activities, and particularly in educational and occupational areas. The pertinent statistics and facts, which had also been reported by the ILO mission, were significant in any comparison with other developing countries. She reported in this regard that social and awareness-raising activities included the establishment of a large number of state and non-governmental committees and institutes throughout the country to facilitate and encourage the higher participation by women in all socio-economic fields in accordance with the importance given by government policy to the empowerment of women. She added that, in the sixth Iranian parliamentary election held at the end of 1999, more than ten women had been elected, one of whom had subsequently been elected to the Bureau of the Parliament. She recalled that current developments in education in her country had received international acknowledgement, including by UNESCO. The numbers of students at universities had risen from 170,000 some 20 years ago, of whom 24 per cent had been women, to 1,400,000 at the present time, of whom 50 per cent were women. It was significant that over the past two years, female entrants to universities had accounted for 52 and 57 per cent of all students, respectively. A new type of women's empowerment project addressing specific target groups in deprived areas had also been initiated and included research, training workshops, the strengthening of local NGOs and other activities.

Turning to the subject of women in the judiciary, she stated that various high-ranking positions were occupied by competent women, as noted by the ILO mission. No distinctions or privileges were set out for women or men in the law respecting the recruitment of judges. Male and female applicants competed in the same examination, which was the only basis for admission as a candidate. All persons admitted had to complete one year of professional training to prepare for the final professional examination for qualification as a judge. At none of these stages was there any distinction between the sexes. Moreover, for a number of years, women had obtained the five highest marks in the examination. There were currently 146 women judges and 380 women attorneys-at-law. The Committee of Experts had noted the influential judicial capacity of women in her country. Moreover, the role of women in the judiciary was not confined to advisory positions. Women were now appointed as judges and made judicial decisions. With regard to the obligatory dress code for civil servants, she stated that the regulations applied equally to men and women working in the civil service. She announced the submission of a copy of the relevant document, as requested by the Committee of Experts, and stated that it did not include any element of discrimination between the sexes and had in practice served as a basis for a higher participation by women.

On the subject of section 1117 of the Civil Code, which had been adopted some 70 years ago, the Committee of Experts had called for either the husband's right to object to his wife's employment to be removed or for the equivalent right of objection to be granted to the wife. In this context, she stated that more recent legislation, namely the Protection of the Family Act, granted the wife the same right in section 18.

She informed the Committee of a major development, namely the adoption of the present Five-Year Development Plan, which incorporated a gender dimension with regard to employment. She emphasized that her Government was determined to develop and adopt the necessary measures to further enhance the employment of women and to take any additional administrative decisions that might be necessary.

In relation to discrimination on the basis of religion, she recalled that her country had been famous for religious tolerance and that religious minorities had found that it was a home in which they could live and enjoy the same citizenship rights, as those acquainted with the situation of Christians, Jews and Zoroastrians in her country could confirm. The ILO mission had confirmed that the members of the recognized religious minorities continued to have high levels of education and employment. Furthermore, in addition to access to all the legal and administrative channels available to all citizens, the members of minority groups also had other formal and informal channels through which they could raise any issue of interest to them. The protection of their interests was also ensured through their representation in the national decision-making process. Indeed, the number of representatives in Parliament from the religious minorities was proportionately higher than that of Muslims. These mechanisms and the tradition of coexistence, which had continued for many centuries, ensured the principle of non-discrimination.

With regard to the employment situation of persons not belonging to any recognized religious minority, she emphasized that the right to employment covered all the citizens in the country. The articles of the Constitution which set out the rights and liberties of the citizens used only general terms, such as "any individual" or "all Iranians". There were no grounds for discrimination in such rights, including in the right to employment. Christians, Jews and Zoroastrians were recognized in the Constitution as religious minorities with a view to ensuring their freedom in their religious rights and ceremonies and so that they could act according to their own cannon in matters of personal affairs, such as marriage and divorce, as well as with a view to the recognition of their religious holidays and their own religious sites and organizations. She therefore explained that recognition as a religious minority was related to religious issues, while non-discrimination was a general principle which applied to all citizens. She added that there were no restrictions for religious minorities in access to universities and higher education.

She indicated that the Government had taken several measures, and would continue to do so, to ensure that the rights of individuals as citizens of the country were well protected. The national Consti-

tution explicitly guaranteed equal rights for the entire population of the country and specific mechanisms existed to ensure that any new legislation, including provisions on non-discrimination, were fully in line with the Constitution. One such mechanism was the Board of Follow-up and Supervision of the Implementation of the Constitution, established a few years previously, which was responsible for monitoring the full implementation of the Constitution and reporting any shortcomings to the President. Complaints against government officials and authorities could also be filed with the relevant courts, Parliament, the Administrative Justice Tribunal and the State General Inspection Organization. In addition to these judicial and administrative safeguards, non-governmental mechanisms were in full operation, including several NGOs active in various aspects of human rights.

She emphasized that new legislation of major importance and direct relevance to the Convention, namely the legislation on the rights of citizenship, had been approved by the Iranian Expediency Council in 1999. This legislation was based on the provisions of the Constitution and re-emphasized the equal rights for all the citizens of the country without any discrimination on the basis of religion, sex, race, ethnic origin and other grounds. It was applicable to all Iranians irrespective of their religion. She added that the Board of Follow-up and Supervision of the Implementation of the Constitution had held its second annual national seminar on citizens' rights and the Constitution which had been designed to raise public awareness and had focused on the rights of minorities. She also noted that her country would be the host of the Asian Preparatory Meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Finally, on the occasion of the ILO mission to her country, a commitment had been made to undertake a number of joint activities with the ILO to further promote the application of the Convention and of fundamental principles. She reiterated the invitation to the ILO to hold a national tripartite seminar in the autumn of 2000 which would cover in detail the provisions and requirements of the ILO's fundamental Conventions. She welcomed ILO cooperation and expressed readiness to collaborate with the Office in various activities to promote the application of fundamental Conventions, including Convention No. 111, in her country. The Islamic Republic of Iran was therefore willing to continue its constructive dialogue and cooperation with the ILO on all subjects, including the implementation of the Convention.

The Employer members thanked the Government representative for the information provided and recalled that the application of the Convention raised very serious issues which had been examined by the Committee over a period of many years. At the Conference in 1999, the Government representative had agreed to receive an ILO technical advisory mission, the functions of which had been set out in the Committee's conclusions. The Employer members believed that the statement by the Government representative had demonstrated a certain superficial appeal, in that the right things had been said. Nevertheless, they expressed a certain concern at the Government representative's affirmation that the Convention complied with the legislation and principles in the Islamic Republic of Iran. They pointed out that the process should be reversed, and it was for national law and practice to be brought into accordance with the Convention. The Government representative had also expressed a commitment to the principles set out in the Convention. However, this differed from complying with its legal obligations. While the national policy objectives might be in the right direction, the necessary legal protection might still not exist. The Employer members expressed the belief that neither the report of the Committee of Experts nor the statement by the Government representative contained precise information on the manner in which the fundamental problems raised were being addressed. While they welcomed measures such as the tripartite seminar and grass-roots educational programmes, they emphasized that the problems were of a systemic nature. Their resolution would require a sense of urgency, which had not been evident in the statement by the Government representative. In practice, despite the existence of a human rights commission, in view of the country's long history of human rights violations, it was not surprising that many citizens might be reluctant to file complaints.

While the Employer members welcomed the improvements with regard to discrimination in employment on the basis of sex, they pointed out that the number of women employed was still relatively low, being under 10 per cent. Moreover, there remained a clear distinction between participation rates of women in high-skilled and low-skilled jobs. The situation was the same in the field of education, where much more needed to be done to facilitate the access of women to higher education. Despite the affirmation by the Government representative that the selection of candidates for the judiciary did not involve any discrimination on the basis of sex, the Employer members referred to the comments of the Committee which still raised concern and called upon the Government to provide proof of the improvements which they claimed had been made. Such proof could consist, for example, of a statistical analysis of the number of judicial decisions taken by women in the judiciary in order to demonstrate that they did not merely fill an advisory role. The Employer members also observed that the issue of the obligatory dress code had not been mentioned by the Government representative. They called for further information to be provided on the exact situation in this respect. With reference to section 1117 of the Civil Code, under which a husband could bring a court action to object to his wife taking up a profession or job contrary to the interests of the family, they urged the Government to take action to remedy this discriminatory situation in both law and practice. Finally, with reference to the situation of the members of the Baha'i, which had not been mentioned by the Government representative, they expressed the conviction that discrimination continued to be exercised in practice.

While noting with interest the information provided by the Government representative, the Employer members feared that little progress had been made in practice over the past ten years with regard to the application of the Convention. They therefore urged the Government to continue taking the positive measures which had been mentioned, particularly in cooperation with the ILO. They also called on the Government to understand the need for a sense of urgency in addressing the problems of non-compliance with the Convention.

The Worker members, after thanking the Government representative for the information provided, recalled that the ILO mission to the Islamic Republic of Iran had constituted a welcome breakthrough in the manner in which this difficult and very serious case had been addressed. After a hostile and confrontational beginning in the early years, it had gradually been possible to progress to a climate of dialogue with the Government. In this respect, they recalled that some years ago the Government had claimed that it was completely different and could not be judged by ILO standards as they were supervised by international bodies. The Government had stated at that time that international standards would only be observed if they were compatible with Islamic precepts.

While welcoming the mission, the Worker members feared that the tone of the comments by the Committee of Experts was too positive, without wanting to degrade in any way the importance of the mission. They recalled that a mission was merely a tool and that the only thing which counted was the result. The result they wished to see was that Iranian law and practice would be brought into line with the Convention. They warned that there was still a long way to go before that point could be reached. While the mission had been expected to clarify the precise situation, it had not necessarily shortened the distance to the desired destination.

On the subject of the mission, the Worker members recalled the efforts which had been made in the Committee in 1999 to ensure that there could be no misunderstanding about the nature of the mission or its mandate. The Worker members had emphasized that its objectives should be clear and that all the problems which had arisen in the application of the Convention should be discussed. In view of the past controversy over the facts of the case, it had seemed evident that the mission would endeavour to contribute to greater clarity on the factual situation as to the application of the Convention. While this had not been stated as among its objectives, the mission appeared indeed to have tried to clarify the situation in this respect. However, what the Committee's report did not contain was a clear and complete list of the mission's contacts. The question therefore arose as to which government officials and representatives of employers and workers, and which other parts of Iranian society had been included and whether they were independent of the Government. They also raised the question of whether the national institutions set up to examine and promote human rights, including discrimination in employment, were independent of the Government. They asked for more information on the mission's contacts with representatives of the recognized religious minorities and whether these had included representatives of the Jewish community as, at the time of the mission, there were serious and politically sensitive problems regarding the latter. They also wondered whether the people engaged in such contacts could be considered to truly represent the views of their minority or of the Government. He questioned whether the mission had met representatives of the Baha'i, and other non-recognized religious minorities. All of these were important questions, the answers to which were indispensable in interpreting the report of the mission. An indication was also required of whether the mission had been able to meet all the persons it wanted to see and whether it had the impression that the people it had met feared reprisals by the Government.

With regard to the findings of the mission, the Worker members drew attention to the many valuable elements in the report of the Committee of Experts. One of these, which was apparently in line with the views of the Government, had been the effort made to situate the shortcomings in the application of the Convention within a

broader human rights context. Interesting information had also been included on the issues discussed earlier in the Committee. However, one issue which the Committee of Experts had raised in the past, and which the Worker members had especially requested the mission to cover last year, was that concerning the Islamic Works Councils. No information had been included in the report on this matter and the reasons for its omission were unclear. The message in the observation by the Committee of Experts was that there were many positive elements concerning the promotion of human rights, including with regard to discrimination on the basis of sex and religion, and tripartite consultation. The Committee of Experts had requested the Government to continue to supply information on the cases pending before the Islamic Human Rights Commission and on the Commission's activities. It had also requested the Government to continue supplying information in its reports on the situation with regard to discrimination on the basis of sex and on the participation of women in the labour market and in certain professions. The Committee of Experts had expressed the hope that certain restrictions on equality of opportunity and treatment of men and women workers would be removed, that section 1117 of the Civil Code would be reviewed and that measures would be taken to promote non-discrimination and the non-recognized minorities.

While all the above was of importance, the Worker members believed that what was completely missing in the report was a reference to what a serious case this had been, to the continuing serious nature of the case, and to the precise situation at the present time in the country with regard to the application of the Convention. Although positive developments had been recognized, the observations contained hardly any criticism of current problems. In this respect, there was a marked contrast between the observation by the Committee of Experts and the report of the Special Rapporteur of the United Nations Human Rights Commission, and such discrepancies had either to be explained or avoided by closer cooperation. It was good that the mission had gone, but it had raised as many questions as it had provided answers.

In conclusion, the Worker members welcomed the Government's desire for dialogue, but emphasized that it was necessary to concentrate on the application of the Convention in both law and practice. It was to be hoped that the mission could be repeated when deemed necessary, some time in the future, and that other forms of cooperation would be developed between the ILO and the Government. They urged the Committee of Experts in particular to examine in its next report whether there had been any changes in the law to bring it into compliance with the Convention, as this aspect of the case appeared to have been neglected by the Committee of Experts.

The Worker member of the Islamic Republic of Iran, mentioning the reference in the Committee of Experts' comments to the first tripartite consultation on social and labour matters, welcomed the first National Labour Conference held last year. He urged the Government to fully implement the recommendations of the Conference, especially those regarding contract labour, small enterprises, and the ratification of Conventions Nos. 87 and 98.

He further stated that during discussions with the ILO technical advisory mission, workers had raised the issue of recent legislation which exempted small enterprises with five or fewer employees from the ambit of the labour law. Unfortunately, this matter had not been examined in the report of the Committee of Experts. He stated that, in his opinion, the law was in open violation of the Convention because it discriminated against workers employed in small enterprises. He noted that parliaments usually enacted laws in favour of workers and that it was unprecedented in the history of his country for a law to be adopted to provide for the non-application of a law to one part of the working population. This new law was against the essence of the Islamic Constitution and principles of social justice and would usher in an era of exploitation. He noted that this law would endanger the rights of approximately 3 million workers, and he therefore urged the Committee to take note of the situation and take appropriate measures. Similarly, he requested the Committee of Experts to evaluate this situation and reflect it in their comments.

Finally, he announced that the workers of the Islamic Republic of Iran were determined, while maintaining peace, to follow up on their demands through proper legal channels, both at the national and international levels. He demanded that the Government repeal the above law as a matter of urgency.

The Worker member of Italy took note of the comments of the Committee of Experts on the basis of the mission invited by the Iranian Government last year. It was clear from those observations that no effective legal and political steps had been taken by the Government to overcome the serious and continuous breach of the content of the Convention. Serious violations of basic human rights and political freedoms had continued to be registered by several human rights organizations. It was quite clear that in this general climate of repression, very few cases on discrimination had been reported to the Islamic Human Rights Commission or to the Supervisory Commission on the Implementation of the Constitution, since both institutions were composed of former high-level government members. In addition, she considered that the judicial system was not independent and was subject to government and religious influence. She recalled that women were not allowed to become magistrates empowered to deliver verdicts, which constituted a clear violation of the Convention. In this regard she requested the Government to abrogate the Conditions for Selection of Magistrates Act of 1982. She also pointed out that women could not freely enter certain sectors of the world of work.

With regard to education, she emphasized that higher education remained an opportunity for only a very small and privileged group of women and pointed out that 30 per cent of adult women were still completely illiterate. She expressed her indignation concerning the fact that discrimination was enshrined in the law through section 1117 of the Civil Code, which gave the husband the right to bring his wife to court for taking a job that he or the family considered contrary to the interests of the family. She therefore called on the Government to abolish section 1117 of the Civil Code. She also strongly criticized the 1975 Protection of the Family Act, which was supposed to extend some rights to women, as well as a new law which had been adopted last April and which provided for sex segregation in health care at all levels.

With regard to violations of the compulsory dress code, while this did not lead immediately to a dismissal, other humiliating disciplinary measures were implemented which could be compared to dismissals. As for the new legislation on small enterprises which denied social protection and other rights at work, she considered this to be a clear violation of the Convention. Finally, unless new legislation and effective programmes were implemented to redress the situation and sanctions imposed on those violating the provisions of the Convention, no real progress would be achieved. As many women in the country were trying to achieve emancipation, these measures were needed to help them succeed in their efforts.

The Worker member of Turkey referred to section 6 of the Labour Code of the Islamic Republic of Iran which provided for equality without distinction based on ethnic origin, race or language. He noted that the absence of any direct reference to sex in respect of non-discrimination created the impression that this legislation did not provide for protection against discrimination for Iranian women. He stated that discrimination against women with respect to marriage, inheritance, guardianship and divorce, as stipulated in the Civil Code, had its parallel in employment and occupation as well. He further noted that section 6 of the Labour Code guaranteed the freedom to choose an occupation, provided that such an occupation was not inconsistent with Islamic principles. He asked for more information regarding the nature of such "Islamic principles".

He added that, under certain circumstances, discrimination on the basis of sex might take on a disguised form, such as in the assignment of tasks and jobs according to the alleged strength of a worker. In the context of a general attitude which considered women as an inferior sex with respect to mental and physical capabilities, such disguised discrimination might be especially important. In this regard, he asked the Government to provide information as to whether Iranian legislation or government policy considered males and females equal with respect to their mental capabilities. He also asked the Government to provide information regarding section 75 of the Labour Code, which provided that women should not be employed to perform dangerous, arduous or harmful work. He asked for further clarification with regard to the definition of these types of prohibited work and as to whether such prohibitions were based on internationally accepted standards. With regard to the observation that women judges had only advisory powers, he asked whether the regulation concerning the conditions for the selection of judges, which stipulated that only male Muslims could become judges, had been amended to bring it into conformity with the Convention.

He then turned to the question of consultations with representatives of workers' organizations during the ILO's technical advisory mission. He pointed out that the Labour Code provided for two types of workers' organizations: guild societies, and Islamic societies and associations established "in order to propagate and disseminate Islamic culture, to defend the achievements of the Islamic Revolution and to further the implementation of article 26 of the Constitution of the Islamic Republic of Iran". He indicated that current legislation allowed for the appointment of an employer's representative in such organizations. Consequently, he asked whether any such organization could be considered as an independent body.

Finally, he referred to the Rules of Procedure and Propagation and Extension of the Culture of Prayer of 29 April 1997, which provided that workers should also be evaluated by virtue of their daily prayers. He asked whether Muslims who did not fulfil their religious obligations could be considered as objects of discrimination.

In conclusion, he called for a direct contacts mission to the Islamic Republic of Iran and the inclusion of this case in a special paragraph.

The Worker member of Singapore noted that the Government had taken a number of measures to attempt to provide more opportunities for women and to assure them greater equality. She urged the Government to put these plans into practice. She further called upon the Committee of Experts and the ILO to continue to monitor the situation closely. With regard to discrimination, she observed that there was no religious basis to justify the ill-treatment and marginalization of women in any society. She stated that equal opportunity for women in education was an investment in the present and future of a country. It was an investment in the present because women made up at least 50 per cent of any society, and a society which chose to deprive itself of women's resources and intellect would severely restrict its own growth. It was an investment in the future because women remained the key caregivers in the family, and poorly educated women would have a harmful effect on future generations. She further stressed that the initiatives by the Government mentioned in the report of the Committee of Experts should not be regarded as concessions but rather as basic rights due to women in any civilized society. With regard to the new law mentioned by the Worker member of the Islamic Republic of Iran, she strongly urged the Government to repeal it immediately. She noted that small enterprises were common in developing countries and that they were usually the largest employer of workers. Excluding such small enterprises from the ambit of labour law would deprive a large majority of workers from the basic protection of the law. In conclusion, she called upon the Government to respect its obligations under the Convention and to immediately repeal the new law.

The Worker member of Romania recalled that this case had been discussed several times in the past and that it had been mentioned seven times in a special paragraph. After reading the report of the Committee of Experts, it appeared to him that several issues were still unclear. For example, he noted that the legal status of the technical mission had only been of an advisory nature and that the sources of information had not been disclosed in the report. According to available information, it appeared that recent law and practice had only increased discrimination against women and religious minorities. The participation of women in the labour market continued to be low and they did not have access to higher posts. Discrimination persisted in the areas of marriage, inheritance, guardianship and divorce, as well as in the field of employment. Legal obstacles to the promotion of women to higher positions in the public service also remained. The situation concerning the obligatory dress code for women public employees had not improved either. In this regard, he referred to the France-Presse news agency which had reported last January on ten women who had been imprisoned for violating the dress code. Furthermore, discrimination on the basis of religion with regard to access to education and employment still persisted. Persons who wished to study at a university had to sit an Islamic theological examination, which prevented religious minorities from entering higher education. This religious discrimination also existed in the public sector. Finally, he emphasized that the new law exempting small enterprises with fewer than five employees from labour legislation constituted a new violation of ILO Conventions. He therefore requested that this case be mentioned in a special paragraph.

The Worker member of Canada stated that the Canadian trade union movement had always followed the situation in the Islamic Republic of Iran with concern and that it had always supported the mention of this case in special paragraphs and the request of a direct contacts mission. He wondered whether it was appropriate to reconsider this approach today. Indeed, a number of developments mentioned in the report of the Committee of Experts appeared positive and encouraging. Nevertheless, he emphasized that the report only mentioned plans and not real change. The Board of Follow-up and Supervision of the Implementation of the Constitution, which had as its aim the reexamination of legislation, was an example of a result which was still awaited. With regard to the Islamic Human Rights Commission, which also dealt with matters related to discrimination, he questioned the composition of the Commission and its independent character and impartiality. He expressed his scepticism about the future, since there had not been a real direct contacts mission, but rather a technical mission. In this regard, he wondered if the technical mission had really had access to victims of discrimination. Furthermore, he observed that, with the entry into force of the new legislation on small enterprises, 3 million workers had been deprived of fundamental rights, thus becoming even more vulnerable to all forms of discrimination. Finally, he emphasized that virtually nothing had been done in this case.

The Worker member of Colombia, referring to the reports of the Committee of Experts on Convention No. 111 and on the technical advisory mission, said that although they contained some indications of progress, it would be a great surprise if the situation had changed radically over such a short period. He emphasized the fundamental importance attached by the Conference Committee to the observance of human rights. In this respect, he stated that it had to be taken into account that cases of discrimination in employment in both the public and the private sectors in the Islamic Republic of Iran were examined by the Islamic Human Rights Commission. However, it was not known whether this Commission was indeed of an independent nature and of an authentically pluralistic composition. Although the Committee of Experts continued to report the existence of acts of discrimination, the Government representative had endeavoured to demonstrate that progress had been made. The Committee of Experts had indicated that recent legislative reforms appeared to include changes, but asked the Government whether it was possible to speak of progress in these matters when only 10 per cent of women participated in the labour market. He insisted upon the need for a direct contacts mission which, in his view, would be more effective than a technical advisory mission. With regard to the ILO mission which had visited the Islamic Republic of Iran, he requested information on the persons and organizations interviewed and whether the Iranian Government had met its requirements. The Conference Committee no longer wished to hear promises, but wanted to see results in law and in practice. In conclusion, he expressed concern at the adoption of a new Act on 26 February 2000 which excluded enterprises with fewer than five workers from the provisions of the Labour Code. This Act showed that, far from improving, the situation was continuing to deteriorate.

The Worker member of France recalled that he had made a firm intervention before this Committee several years ago to denounce the discrimination against the Baha'i community. At that time the Government representative of the Islamic Republic of Iran had severely criticized his statement. He appreciated that the dialogue was now more constructive. He was rather surprised at reading the report and the conclusions of the Committee of Experts. In his view, discrimination was still present in the Islamic Republic of Iran. He recalled that the Government had declared last year that the mission could be conducted without any restrictions on its mandate. This had, however, not been the case in practice. He referred to paragraph 4 of the report of the Committee of Experts and highlighted the contradiction between the fact that, on the one hand, only 10 per cent of women were employed, which apparently corresponded to their desires, and on the other hand, laws were in force which allowed men to prohibit their wives from working. Finally, he requested that this case be mentioned in a special paragraph.

The Worker member of Greece recalled that this case had been the object of discussions in a wholly different climate in the past. He noted with pleasure the changed attitude of the Iranian Government. He was uncertain why the Government feared a direct contacts mission and had transformed it into a simple advisory mission. With reference to the report of the Committee of Experts, he fully agreed with the observations made by the Worker member of France. He also emphasized that the word "Islamic" should not be part of the title of the Committee on Human Rights, as this meant at the outset that religious minorities would not be recognized by it. With regard to the discriminatory measures, he was of the view that international public opinion would not be appeased by statistics, but required concrete action. He also emphasized that the Islamic Republic of Iran had not ratified Conventions Nos. 87 and 98. Finally, he considered that this case should be mentioned in a special paragraph, not as a sanction, but in order to enable observers to be informed both on the progress accomplished and on what remained to be done.

The Worker member of Pakistan stated that it was positive that the Government had accepted the mission and opened dialogue. He also noted with great interest the interventions concerning the contradiction between law and practice in the Islamic Republic of Iran and Convention No. 111. He expressed particular concern regarding the reference that the Iranian Worker member had made to the new Act which deprived workers in enterprises employing less than five persons of all labour protection and social benefits. He further recalled previous discussions in this Committee in which the Government had displayed little interest in heeding the requests of the Committee of Experts. The fact that a dialogue had now been established was positive. He recalled, however, that the Government was bound by an international obligation to remove all discrimination based on gender, race, colour or creed both in practice and in law. He expressed the wish that by its next meeting the Committee would be able to note clear progress in this respect and that the recently adopted law would be repealed.

The Government representative stated his appreciation of the views expressed during the discussion tending to constructive dialogue. He recalled that when a government was considering the ratification of a Convention, it studied its law and practice and, once it had determined that there were no contradictions, proceeded to ratify the Convention. His Government believed there were no contradictions; it was determined to implement all the provisions of

the Convention in full and requested the assistance of the ILO in that regard. In replying to the points raised during the discussion, he offered to provide all the available information to the ILO after it had been translated. With regard to the issue of religion, he pointed out that the new President had established the Supervisory Commission on the Implementation of the Constitution, the mandate of which covered all Iranians irrespective of their sex or religion. He also stated that the members of the Islamic Human Rights Commission were independent and that it was not just dealing with problems of Iranian Muslims. All Iranians could refer violations of their rights to this Commission. He recalled that the Protection of the Family Act gave the same rights to women as those granted to men in section 1117 of the Civil Code. With regard to the participation of women in education, he noted that UNICEF had reported on the increased participation of girls in the education system and the role of women in raising educational standards. For example, over 70 per cent of the candidates accepted for pharmaceutical examinations were women and their marks were better than those of men. He referred members of the Committee to the detailed statistics found in the UNESCO report. He also offered to provide a list of high-ranking women in the Government, including the Vice-President, deans of universities, and members of parliament. Concerning the new law on small enterprises, he noted that the workers had protested against the law and the Ministry of Labour and Social Affairs had objected to its adoption. He indicated that the new Parliament would soon address the issue again and consider a new law. On the subject of the recognized religious minorities, he emphasized that they were represented in Parliament and had enjoyed a long tradition of peaceful coexistence within the country. Although the members of the Baha'i faith did not belong to a recognized religious minority, under the terms of the legislation on the rights of citizenship approved by the Expediency Council in 1999, all Iranians enjoyed the rights of citizenship irrespective of their belief. The Government was making all efforts to remove difficulties within the framework of the Constitution. In conclusion, he recalled that the ILO mission had been made welcome although the discussions had sometimes been difficult. Everything should be done to facilitate the continuation of the constructive measures taken by the Government, including the holding of seminars and training courses. In view of the efforts which were being made, his Government looked forward to cooperation from all concerned.

The Employer members emphasized the importance of the Government making a demonstrable improvement in its law and practice before the next meeting of the Conference Committee. It would be necessary for it to provide the relevant amended legislation and statistical evidence to prove to everyone that meaningful progress was being made in complying with the provisions of the Convention.

The Worker members stated that between now and next year proof would need to be provided of the progress which had been made. The evidence should be reflected in the text of the report of the Committee of Experts next year. On the basis of the information provided during the discussion, the Committee should recognize the positive attitude shown by the Government and the value of the ILO mission. It should also express a cautious welcome with regard to certain positive developments in the country, while emphasizing the serious nature of the shortcomings in the application of the Convention. It should also urge the Committee of Experts in its next report to include a detailed assessment of the situation with regard to compliance with the Convention in practice and, in particular, in law. The Government's request for ILO assistance should also be noted.

The Committee took note of the statement made by the Government representative and the subsequent discussions. It recalled that this case had been the subject of discussion in the Committee over a number of years and that serious divergencies from the requirements of the Convention had been noted. It also recalled that last year it had welcomed the Government's request for a technical mission to examine all points raised concerning the application of the Convention, and that the report of the mission had been reflected in the report of the Committee of Experts. The Committee noted with concern that some legal restrictions remained on the employment of women, including the fact that women judges were still unable to render verdicts, and section 1117 of the Civil Code. In spite of the progress in participation rates, women's participation in the labour market remained very low. It noted that the Government was examining measures to remove the formal obstacles to equality for women, and noted the intention to hold a national seminar on workers' fundamental rights before the end of 2000. The Committee also regretted the legal and social obstacles to equality which still remained for religious minorities, although it noted the Government's intention to take measures in this regard. The Committee urged the Government to continue to work towards improvements in the application of the Convention in law and in practice, including the promotion of greater tolerance for all groups in the country, and to be vigilant in prohibiting discriminatory practices on the grounds enshrined in the Convention. It noted nevertheless that serious questions of application of the Convention still remained. The Committee requested the Government to submit all the information provided orally during the meeting to the Committee of Experts. It also requested the Government to report in detail to the Committee of Experts on the concrete measures taken to address the questions raised by the Committee of Experts and this Committee, including detailed statistical analysis of the participation of women and men and minorities in the labour market in both the public and the private sectors. The Committee expressed the firm hope that the Government would deal with the issues raised as a matter of urgency and would be in a position next year to report progress on the outstanding issues in order to ensure the full application of the Convention in law and in practice and requested the Committee of Experts to provide a detailed assessment of compliance with law and practice. The Committee encouraged the Government to continue cooperation with the ILO.

Convention No. 122: Employment Policy, 1964

Hungary (ratification: 1966). A Government representative stated with reference to article 24 of the ILO Constitution that, in 1997, the National Federation of Workers' Councils submitted a representation against the Hungarian Government, alleging non-observance of Conventions Nos. 111 and 122. The representation related to a 1995 government measure. The ILO Governing Body set up a tripartite committee to examine the case. Under individual observations in Part 1A of its Report III, the Committee of Experts on the Application of Conventions and Recommendations discussed this issue under both Conventions Nos. 111 and 122, on the basis of the statements of the Committee and information provided by the Government. The Officers of the Committee requested the Government to express its standpoint regarding those aspects of this issue that were of relevance for Convention No. 122. In 1995, in a situation of financial emergency, the Hungarian Government approved a supplementary budget act requiring, among other things, a reduction in costs provoking lay-offs in higher education. The representation contested the manner in which the measures in question were implemented. The Government admitted that certain unlawful steps were taken in the course of the implementation of the measures concerned, which were likewise pointed out by the Hungarian authorities. It did not wish to plead that these had occurred under the previous Government, as they affected the fate of individuals — hopefully not irremediably. On the other hand, lessons could be drawn from the issues involved as regards the development of employment policy for the Government in office at the time. Points 1 and 2 of the report of the Committee of Experts summarized some sections of the latest government report on the implementation of Convention No. 122. Under point 3, the Committee of Experts noted the higher labour market participation rate of men than women, and requested the Government to provide further information on measures to promote employment amongst women. The Government representative pointed out that the lower labour market participation rate of women was not a specifically Hungarian phenomenon. According to the OECD (*Employment Outlook, 1999*), in 1998, among those aged 15-65, the participation rate of women was lower than that of men in most developed countries. In the countries of the European Union, the average difference was 20 per cent. In Hungary, the corresponding rate was somewhat more favourable at 16 per cent, but this occurred at a lower employment level. The lower unemployment rate of women than of men, on the other hand, was a specific, and positive, Hungarian feature: in 1999, the respective annual average rates were 7.5 per cent for men and 6.3 per cent for women. However, the Government remained dissatisfied with the situation and was making efforts to improve it, through job creation and by promoting the employment of women.

He highlighted two of the employment policy objectives for the year 2000 set by Governmental Decree: (1) employment expansion and, in the long-term, attainment of full employment, in accordance with the objectives of the European Union; (2) moderation of labour market discrepancies, in particular by promoting an equal opportunity policy, one of the four pillars of the European Union employment strategy. Over the last few years, the Government had taken the following measures, besides specific programmes and amendments to legal regulations, with a view to reinforcing the principle of equal opportunity for women: protection under labour law; shorter working hours for minors, pregnant women, mothers/parents; improvement of labour market opportunities for women and parents with young children, achieved through the following programmes: teleworking; part-time employment promotion; promotion of potential entrepreneurs; improved labour law protection to parents returning to work from childcare leave; free legal coun-

selling programme launched by the Ministry of Social and Family Affairs to remedy and prevent discrimination at the workplace; authorization of the labour inspection authorities to investigate allegations of violations of the principle of equal opportunity, and the training of labour inspectors. The case in question had encouraged the Government to put through legal amendments to remedy the situation which permitted discrimination arising from differences between the pension eligibility criteria of men and women. Although not directly linked to the issue of discrimination, certain aspects of the same issue also encouraged the Government to take steps to shorten court procedures by substantially raising the courts' budgets. As a result, the duration of labour law proceedings had shortened radically, thus improving the position of workers involved in such litigation. Technical training was provided to job centres so as to enable them to act effectively in cases of possible mass lay-offs.

Further action plans included: the evaluation of the programmes launched to assist women; the extension of those which proved viable, with special regard to the improvement of labour market opportunities for mothers with children and persons near retirement age; encouragement of the social partners and strengthening of cooperation between the Government and social partners; preparation of the appropriate transformation of the system of statistical accounting; adoption by the Government of every equal opportunity directive of the European Union this year. The Government representative had submitted statistical data concerning the development of employment of women over a period of time to the Office.

Point 4 was related to the concerns that arose in the Committee of Experts expressed in respect of the 1998 termination of the Ministry of Labour. This termination had been one of the measures the Government instigated on taking office in June 1998. The first question before the Government concerned the procedures to monitor the effectiveness of its measures to promote economic and social development. In June 1998 the Government reallocated the responsibilities of the former Ministry of Labour as follows: employment policy-making, managing active employment measures, and collective bargaining came under the Ministry of Economic Affairs; issues related to vocational training came under the Ministry of Education; adult training and labour market training, the employment service, passive employment policies, labour law and labour inspection stayed with the Ministry of Social and Family Affairs, who took over the full powers of the former Ministry of Labour. The idea behind the present structure of the Government was that if job creation was to be its most important employment policy objective, it was best served by being firmly grounded in economic policy. His Government was of the opinion that these measures had been justified. Now halfway through its term, his Government was currently evaluating its experience so far in office, and it was probable that corrective measures would be taken in order to increase the effectiveness of the cabinet. His Government would notify the ILO of such corrective measures in due course.

With regard to discussion and procedures of employment-related issues within the Government, in line with Article 2 of the Convention, the Government had established employment policy objectives in a Decree, the implementation of which involved several ministries. These objectives had been fixed for the year 2000 bearing the European Employment Strategy in mind, as well as the guidelines adopted by the European Council. In the same section, the Committee of Experts had also inquired about the way in which the dissolution of the Ministry of Labour affected the consultation process with employers' and workers' organizations and other actors. It could be assumed from the question, that the Committee of Experts was aware of the fact that Hungary had had soundly operating institutional forms of social dialogue ever since the political changes which had taken place within the country. The former national tripartite consultative forum — the Council for the Reconciliation of Interests — had been replaced, although its participants virtually unchanged, by the National Labour Council. This forum fully retained the authority held previously by the Council for the Reconciliation of Interests, which included both determining the national minimum wage, as well as tasks provided under the Labour Protection Act, and it also ensured a consultative forum concerning issues related to the world of labour. The Governing Body of the Labour Market Fund operated principally in the field of consultation and was responsible for decisions concerning subjects related to the world of labour. This tripartite body discussed the Government's employment policy objectives and priorities, and decided on the allocation of funds from the Labour Market Fund used to implement employment policy objectives and those to be allocated to active and passive measures; it was also responsible for the allocation of central funds, available for national programmes, and the decentralized financial resources to be channelled to the districts and countries. On a county or district level, the use of these was decided on by the county labour councils, jointly with representatives of local governments. His Government had also created the Economic Council and the National ILO Council. Strategic consultation undertaken in the Economic Council concerned the whole of the economy, and comprised, besides the traditional social partners, other actors, such as the Economic Chambers and the Banking Association. The National ILO Council held a mandate in conformity with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). To the speaker's best understanding, the social partners were satisfied with its performance. It was a great honour for the members of the Council when the Director-General of the ILO participated at one of their sessions during his visit to Budapest in May this year. In compliance with article 22 of the ILO Constitution the Government had prepared a detailed report in 1999 on the implementation of Convention No. 144, describing the new system of collective bargaining. The Council unanimously accepted the report.

In point 5 of its report, the Committee of Experts requested the Government to provide further information in its next report under article 22. The Government had taken note of the Committee of Experts' request, and would be pleased to satisfy it.

The Worker members thanked the Government representative for the detailed information he had supplied and recalled that this was the first time the case had come before the Committee on the Application of Standards although the Committee of Experts had previously commented (in 1993, 1996 and 1998) on Hungary's application of Convention No. 122. The Worker members emphasized the importance of a genuine employment policy in the context of globalization; the need to frame a coherent, integrated and non-discriminatory employment policy; and the significance of tripartite consultation on all employment-related aspects of social and economic policy. The Worker members noted with concern employment developments in Hungary and in particular the comments made by the Committee of Experts on employment policy and its effects on employment in general. The Worker members drew attention to three matters raised by the Committee of Experts in its report. The first concerned the labour market participation rate for men and women. According to information in the Government's report the rate for men was higher than women's. This raised the issue of compliance with Article 1, paragraph 2(c) of the Convention, which provided for a non-discriminatory employment policy. Doubtless, some of the blame could be attributed to social attitudes unfavourable to women workers. However, inasmuch as the complaint against Hungary submitted under article 24 of the ILO Constitution alleged breaches of Convention No. 111 and of Article 1, paragraph 2(c), of Convention No. 122, there were serious indications that discrimination was *also* due to the Government's employment policy; that was central to the debate. The representation against Hungary concerned the effects of the Supplementary Budget Act of 1995, which provided for a reduction in personnel expenses in institutions of higher education. The Worker members observed that the Committee which had been set up under article 24 of the ILO Constitution and examined the representation was unable for want of sufficient information to reach a firm conclusion. For that reason they agreed with the Committee of Experts that more specific information be requested notably on the actual impact of the 1995 Act on higher education and detailed statistics assessing the respective effects of the Act on men and women. While the Government had furnished information, the Worker members considered that much more detailed statistics were necessary to assess the real impact of the 1995 Act. The third point raised by the Committee of Experts concerned the Government's decision to dissolve, purely and simply, the Ministry of Labour and to distribute its previous functions to various separate ministries, such as the Ministry of Economy, the Ministry of Education and the Ministry of Social and Family Affairs. The Worker members regarded this development as worrying and largely at odds with the provisions of the Convention concerning coordinated employment policies that integrated economic and social issues. The Worker members accordingly supported the questions raised by the Committee of Experts in this respect for it was necessary to establish how the Government managed to fulfil its obligations under Articles 2 and 3 of the Convention and what procedures it had adopted to ensure that its various policy decisions, whether at the planning or implementation stages, had a positive impact on employment. They seriously doubted whether measures had been taken to guarantee a coordinated employment policy. Under the circumstances they wondered whether the country had effective tripartite consultative machinery that could contribute to the framing of a dynamic employment policy following the dissolution of the Ministry of Labour. They feared that dissolution of the Ministry might have a harmful effect on the employment situation in Hungary, for which they expressed deep concern.

The Employer members stated that this was the first time the case of Hungary was being dealt with by the Committee. They thanked the Government representative for the detailed and comprehensive information he had just supplied to the Committee.

They further noted that information contained in the Government's report was relevant for the period May 1996 to May 1998 and hence dealt with a past situation. With regard to the content, the Committee of Experts had examined numbers concerning employment and unemployment rates. It was surprising that, while the potential workforce was growing in the country, the number of economically active persons had declined. There was a decrease in labour supply in response to a decrease in labour demand. The Employer members believed that this was due to the phenomena of extended education and training periods and early retirement. As a result, there was an obvious decrease in the number of economically active persons. Turning to the issue of employment rates for men and women, they noted from the Committee of Experts' comments that the labour market participation rate was higher for men than for women and from the Government representative's statement that the situation was similar in many other countries. They were of the view that evolution in society and different expectations could explain the statistical data provided by the Government which illustrated that the unemployment rate for women was lower than for men.

The Employer members pointed out that the objective of Convention No. 122 was to obtain a comprehensive overall picture concerning employment policy. Economic and social policies were part of government policy, therefore an isolated view on issues concerning employment policy was not possible. They expressed their surprise over the fact that the Committee of Experts had raised the issue regarding the dissolution of the Ministry of Labour. There was, of course, a long-standing tradition regarding the establishment of labour ministries. If the Ministry of Labour had been dissolved, obviously its task had been distributed to other ministries. What was important was that the tasks traditionally carried out by the Ministry of Labour were undertaken by another body. It was therefore of minor importance to which ministry or institution these tasks were distributed. The Employer members believed, however, that the Committee of Experts was more concerned about the manner in which the dissolution had probably affected consultation with employers' and workers' representatives on subjects concerning the coordination of employment policy. In this regard, the Employer members welcomed the information provided by the Government representative to the effect that tripartite consultations were effectively carried out in the country. With reference to the conclusions of the Committee set up to examine the representation made under article 24 of the ILO Constitution, to which the Committee of Experts also referred, the Government should supply additional information in order to determine the effect of the Supplementary Budget Act of 1995 which had been the subject of the abovementioned representation. Since the Government representative had shown his Government's readiness to provide this information, the Committee's conclusions should mainly reflect this aspect. The Employer members concluded that the issue of employment policy was an ongoing duty of each government and that the Committee would certainly come back to these cases.

The Worker member of Hungary indicated that in 1995, more than 10,000 employees were dismissed within some weeks at the higher education institutions in Hungary in connection with the Supplementary Budget Act of 1995 which decreased the staffing costs and the budgetary contributions of these institutions. At the same time, Government Decree No. 1023/1995 prescribed a 15 per cent staff reduction for higher education institutions. This was followed by a Ministry of Culture and Public Education measure also ordering these institutions to undertake the staff reductions. The Government fixed a deadline of only three months for the execution of the staff reduction. The purpose of this mass redundancy was to make savings in the state budget. However, no consultations had been held with the workers' representatives or the universities before taking this decision. The government decision had not been taken with respect to any aspect of an employment policy. With regard to the legal aspects of the case, the Hungarian Constitutional Court had qualified the Decree and the Ministry of Education measures as anti-constitutional and had cancelled them on 22 June 1995, on the grounds that the measures constituted unlawful interference with the autonomy of the universities. However, the staff reduction measures were nevertheless implemented. Moreover, although the Parliamentary Commissioner of Citizens' Rights (the Ombudsman) had asked the Ministry of Education to take the necessary measures to remedy the harm done to the teachers and the researchers concerned, no action had been taken. Finally, in 1997 Parliament ordered the setting up of a special committee to assess the implementation of the whole staff reduction process — in accordance with the Ombudsman's suggestion — but this committee was never established. Regarding the social aspects of the case, since the Government had not taken into consideration the employment effects nor the social aspects of the staff reduction measures, the vast majority of the employees concerned had still not obtained any financial, moral or any other kind of remedy. As regards the Government's current employment policy, she pointed out that the social partners were still not involved in the formulation and preparation of national employment policy. In Hungary at the moment, there was no special labour or employment ministry. Employment policy was shared between three ministries. The Ministry of Economy was responsible for reconciliation and employment policy; the Ministry of Social and Family Affairs dealt with social matters and employment policy; the Ministry of Education was responsible for training, retraining and vocational training policy. Consultation with the social partners at the national level was being carried out within several special tripartite or multipartite councils set up by the Government last year. The main new councils were: the National Labour Council; the Council of Economy; the National ILO Council; the Council of Social Affairs; and the Committee for European Union Integration. The trade unions were not perfectly satisfied with this new structure and especially not with its operation.

The Worker member of France observed that over the past few years a good many countries had changed the names of their Ministry of Labour and restyled them Ministry of Employment or Ministry of Employment and Social Affairs. Those changes generally reflected progress towards the implementation of more active employment policies with an accent on the initial and ongoing training of workers, including the long term unemployed, and the integration of young people and women in the labour market. It was an innovative and original step to dissolve purely and simply the Ministry of Labour and reallocate its functions to other ministries. Although Convention No. 22 did not stipulate what structure a government should have, governments had to be structured in such a way as to be able to implement the effective employment policies that the Convention required. In this respect, the treatment of staff in institutions of higher education under the Supplementary Budget Act of 1995 was a cause of particular concern, the more so in so far as training was an essential weapon in the battle against unemployment. According to the report of the Committee of Experts, Hungary plainly had a critical need for an active and coordinated employment policy. Only a very small proportion of the active population was employed. The proportion of long-term unemployed workers was exceptionally high (having risen to nearly 50 per cent, despite a slight drop in recent years) and the average duration that people remained without work was quite long (in the order of 19 months). That suggested high levels of "moonlighting", a lively informal economy and widespread unlawful activities. It therefore had to be asked what means the Government had to carry out effective and coherent policies to reduce unemployment, train workers, generate employment (self-employment or wage earning), etc. and what means it had to follow up these policies and ensure coordination with social policy generally.

Convention No. 122 derived from the ILO's Constitution itself, in particular from the Declaration of Philadelphia which enjoined the Organization to support programmes that promoted productive and freely chosen employment and the raising of standards of living, the reduction of unemployment and the guarantee of a salary sufficient for acceptable living conditions. Convention No. 122 also followed from the Universal Declaration of Human Rights, which said that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". Convention No. 122 required member States to declare and pursue, as a major goal, an active policy designed to promote full employment for all who were available for and seeking work. The measures required and adopted to this effect had to be decided on and kept under review within the framework of a coordinated economic and social policy. Representatives of the persons affected by the measures to be taken, in particular representatives of employers and workers, had to be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies. Without question, Hungary greatly needed an active and coordinated employment policy. It had to be asked how such coordination could be ensured when the functions of the Ministry of Labour had been parcelled out among various other ministries. The same question arose concerning consultation and ongoing collaboration with the social partners, areas in which significant gaps seemed to have appeared. It was the role of a Ministry of Labour or a Ministry of Employment and Social Affairs to frame such policies, to coordinate them with other policies and consult and collaborate with the social partners, to draft labour legislation and follow its application, to help the unemployed find work again and take measures that guaranteed suitable unemployment compensation, and to give women equal access to employment. The Hungarian approach was to subordinate social issues to economic ones in denial of their inherent value under the ILO Constitution. It was therefore important for the Government to open consultations quickly with the social partners to examine ways and means to achieve an effective and coherent employment policy in keeping with the aims of the Convention and to comply with its provisions. The right to work

was a basic human right since it enabled workers to provide for their own needs as well as those of their family. It was, to be sure, for the Government to choose the most appropriate means of safeguarding that right. In any event it had to protect it. The statistics before the Committee demonstrated that this right had not been implemented. The Worker member appealed, therefore, to the Government of Hungary to frame an active, coordinated and coherent employment policy fully involving the social players and to set up an effective and coherent coordination structure.

The Worker member of Romania stated that although this Committee was examining the case of Hungary for the first time, the Committee of Experts had already formulated three observations regarding the application of this Convention by Hungary and underlined the importance of Convention No. 122 for workers. The fact that the labour market participation rate was lower for women than for men was a violation of Article 1, paragraph 2(c), of the Convention. The second point raised by the Committee of Experts in its observation concerned the representation presented under article 24 of the ILO Constitution. The representation related to the application of the Supplementary Budget Act of 1995 which had resulted in the mass dismissals of employees of institutions of higher education. As regards the third point raised by the Committee of Experts, namely the pure and simple dissolution of the Ministry of Labour, he considered the situation to be unacceptable. The negative effects of such a decision on the consultation process between the social partners could already be foreseen.

A Worker member of Italy stated that it was quite clear that employment policy and social dialogue remained a major problem in Hungary with no adequate and effective strategies especially to fight long-term unemployment and enhance equal opportunity programmes to include women in the labour market and promote job creation in the emerging sector. The so-called growth promotion strategy indicated in the Committee of Experts' report could not succeed due to structural mistakes within the government measures and total lack of social dialogue. The first structural problem was linked to the splitting of the Ministry of Labour. This fragmentation of responsibilities and lack of effective coordination represented a major handicap for effective employment programmes. Such programmes needed a higher synergy in the monitoring, planning and implementation stages, especially to face long-term unemployment and to adapt vocational training to match market supply and demand. It would appear that there was still a lack of an appropriate investment policy in areas with higher unemployment in order to create better conditions in terms of infrastructure to attract productive investments. There appeared also to be a lack of appropriate social measures to support affected workers and help them to find new jobs. This critical situation also risked producing a high emigration of young unemployed persons towards neighbouring countries thereby creating a critical social situation which would undermine economic and social stability. A joint coordinated socio-economic employment plan within the Government and at all levels of public administration needed to be defined with the full inclusion and participation of employers' and workers' organizations in the search for adequate solutions. Such social dialogue, however, was not implemented even though a national labour council and other bodies existed on paper. Empty institutions needed to be clearly restructured in order to develop a joint employment pact between the Government and employers' and workers' organizations. Moreover, an effective employment policy had to be promoted jointly with respect for core labour standards. This lack of implementation of adequate employment policies and plans had been sharply criticized by the European Committee and the Economic and Social Committee of the European Union in more than one report, in view of employment in the European Union (EU) and the entry of Hungary in the EU. The most significant example of the lack of such an employment policy in Hungary was the dismissal of more than 10,000 employees in the higher education institutions due to budget restrictions. No consultations with the union and, above all, no social measures had been taken to help the workers find new adequate jobs. The Government should therefore promote a fundamental change of strategy to be verified by this Committee. A joint task force between all interested authorities and social partners both at the national and local levels should be set up with the support of the ILO MDT, thus taking advantage of European programmes and positive experiences in social dialogue.

The Government representative acknowledged the statements by the Worker member of Hungary. However, he recalled that the issues raised dated back to 1995 and therefore concerned the previous administration. He stressed that the new administration had learned from the mistakes of the prior Government. As far as the functioning of a coordinated employment policy was concerned, it did not depend on the existence of a Ministry of Labour. He noted that the distribution of powers was a matter for the Government and that coordination must take place at the government level. In his Government's view, it was imperative that the issue of employment policy be handled correctly and that it must form part of the Government's policies as a whole. In conclusion, he stated that the coordination of employment policy as well as tripartite consultations were functioning correctly.

The Worker members took note of the information furnished by the Government representative. They asked that he transmit all the information requested to the Committee of Experts so as to conclude the representation presented against the Hungarian Government under article 24 of the ILO Constitution. They noted that the Government was preparing reforms to its statistical data management and invited it to keep the Committee of Experts informed of any developments in this regard. Regarding the issue of employment policy, they emphasized that it was not the name of the competent ministry which was important but rather the substance of the policy to be implemented as well as consultations between employers' and workers' representatives. They requested the Government to take advantage of ILO technical assistance in order to establish a truly coordinated employment and social policy.

The Employer members believed that the Government representative had already supplied comprehensive information on this case to the Conference Committee and indicated that the Committee's conclusions should request the Government to keep the Office fully informed on all employment policy matters in future reports to the Committee of Experts.

The Committee noted the detailed information, including statistics, supplied by the Government representative, and the discussion which followed. It was concerned by the continuing low rate of employment in the country, particularly for women, and the effect of the employment policy on women. It noted, however, that the Government had adopted a policy of promoting economic growth which was expected to have the effect of increasing employment opportunities, and hoped the Government would provide detailed information on the effect of this strategy. It also hoped the Government would submit additional information on its efforts to increase the labour market participation of both men and women. The Committee noted the dissolution of the Ministry of Labour and the redistribution of its functions. It expressed the hope that the Government would furnish the detailed information requested by the Committee of Experts on the effects of this decision on employment and on the promotion of economic growth. This should include information on the effect of this move on ensuring that a coherent employment policy was pursued, as well as on consultations with employers' and workers' organizations and other forms of social dialogue. It asked the Government to ensure that employment policy in conformity with the Convention was assured, and that social dialogue was not compromised.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Mexico (ratification: 1990). The Government has sent the following information:

With regard to the first paragraph of the observation of the Committee of Experts, the Government has reaffirmed its desire to pursue cooperation with the ILO not only by submitting reports and information requested from time to time, but also by the implementation, when necessary, of specific recommendations. With reference to the 1996 observation of the Committee of Experts, on 24 May 1999, the Government organized a "Seminar on the Inspection of Labour Conditions in the Rural Sector". This technical cooperation included the participation of ILO officials, representatives of indigenous peoples' organizations, and officials of the Mexican Government.

The second paragraph deals with the protection of land rights of the Huichol Indian community of San Andrés Cohamiata, in the municipality of Mezquitic, Jalisco. In June 1998 the Governing Body adopted the report of the committee set up to examine the representation concerning the violation by Mexico of ILO Convention No. 169, submitted under article 24 of the ILO Constitution by the Radio Education Trade Union Delegation, D-III-57, section XI, of the National Radio Education Trade Union (SNTE). The Government of Mexico had received supplementary information from this trade union delegation in August 1999 and replied in October 1999. At this stage, the Committee of Experts requested the Government to provide detailed information in its next report. The Government of Mexico provided the information as requested to the ILO on this representation concerning an alleged violation of Convention No. 169. According to the complainant, the Mexican authorities have not returned to the Huichol Indian community of San Andrés Cohamiata, and in particular to the "Tierra Blanca" group of Huichol Indians, land they had historically possessed and which had been given to another rural mixed-race population at Nayarit. This case has been on judicial appeal for several years. In this regard, the Government had presented its comments in communications dated 24 November 1997, 8 December 1997, and 9 and

24 March 1998. The Committee of Experts is already aware of the decision of the Agrarian Unity Tribunal of Tepic, Nayarit, of district XIX, which is the authority in charge of examining the "amparo" No. 430/96 (request for constitutional review), brought by the indigenous people of "Tierra Blanca" in application of the executory decision of the third circuit collegial tribunal which declared the lower court's decision groundless, resulting in the appeal procedure to clarify the terms used in the judgement which protected them. The "Asociacion jaliciense de apoyo a grupos indigenas" (AJAGI) was legally involved in the controversy concerning San Andrés Cohamiata and "Tierra Blanca". This association developed management advisory training and agrarian military defence and human rights activities in the Huichol region, in the states of Jalisco and Nayarit, and is funded by the Indian National Institute (INI) to develop its activities in the framework of a coordination programme of conventions regarding legal recourse. Detailed information will be supplied on this case in the next report of the Government in 2001; however, this discussion is a suitable forum at which to indicate that the case is before the Agrarian Unitary Tribunal. Concerning the executory act previously mentioned, on-site inspection is presently taking place.

The third paragraph of the observation of the Committee of Experts refers to a representation concerning land rights of the indigenous community of Chinanteco displaced in the Uxpanapa Valley in Veracruz. In November 1999 the Governing Body adopted the report of the committee set up to examine the representation concerning the violation by Mexico of ILO Convention No. 169. The representation had been submitted under article 24 of the ILO Constitution by the Radical Trade Union of Metal and Similar Workers. In January 1999 the Mexican Government received a request for information on the indigenous community of Chinanteco, and provided a reply on 25 February 1999. At this stage, the Committee of Experts requested the Government to provide information on the measures taken to bring a solution to the situation of the indigenous community of Chinanteco. The Government of Mexico has informed the ILO of the situation of the indigenous population of Chinanteco which had been displaced from their native land of Oaxaca in the Uxpanapa Valley, following a government decision to build a dam in 1972, and of the complaints regarding presidential decrees ordering their displacement. Reserving the right to provide supplementary information in the report it is preparing, the Government of Mexico has provided the following information on the current situation.

In the first place, the Government had concentrated its efforts on communication with the indigenous community of Chinanteco resettled in the Uxpanapa Valley. To this end the INI has supported the creation of social organizations such as the Committee for the Defence of Indian Rights, Chinanteco-Zoque-Totonaco and the Indian Council of Uxpanapa to protect the rights of the communities and to further economic and social development. Parallel to this, there is a Regional Indian Fund in the Uxpanapa Valley which supports the organizational process of the communities and promotes regional development. A Regional Indian Fund for the women of Chinanteco will be set up in August to promote training and development with regard to gender questions. Following its creation in 1996, the free municipality of Uxpanapa has benefited from significant financial resources: 15 million pesos during the past five years, financing public works, food projects and, in general, all economic and social development projects of the region. In November and December 1999, the INI developed workshops for evaluation and planning of infrastructures. These workshops helped to provide financing for various agricultural programmes and the purchase of machinery. Since January 1999, the municipality of the Uxpanapa Valley has the following public services: 19 systems of drinking water, 26 electrical energy networks, one drainage infrastructure, a market, a garrison, municipal agencies, a post office, a satellite telephone and a radio communication system. Concerning education, there were 44 crèches, 67 primary schools, nine secondary schools, two high schools and five dormitories for students of the INI. Concerning public health: one clinic of the ISSSTE, the IMSS-COPLAMA and a health secretariat, eight treatment centres organized by the health secretariat of the government of Veracruz, and six rural medical units.

The fourth paragraph of the observation referred to a loss of a right of inalienability of indigenous lands, to agreements with multinational enterprises allowing exploitation of mineral and forestry resources on indigenous lands without the involvement of indigenous peoples as contemplated in the Convention, the failure to take account of results of consultations with indigenous representatives concerning constitutional reforms, and allegations of abuse and exploitation of indigenous migrant workers. In September 1999, the International Labour Office sent the Government of Mexico information concerning a second report from the Authentic Workers' Front (FAT) on the situation of the indigenous populations in Mexico. The Government provided its comments on 5 November 1999. The Committee of Experts considered that the information provided in this reply was insufficient.

(a) The Government considers that land rights belong to every Mexican Indian. The lands of Indian populations can be considered in three different ways which are recognized by the Constitution: national, private and social. With regard to the composition of the population, the communes and the communities can be Indian or mixed-race; all are not made up of exclusively indigenous populations. Similarly, the indigenous populations of Mexico are not all organized in communes. Concerning the arguments according to which the protection of land of indigenous peoples had been ended with the repeal of the Federal Law on Agrarian Reform of 1972, according to which the Agrarian Reform of 1992 would render indigenous land transferable, attachable and seizable, it must be observed that the Constitution and numerous relevant articles of the Agrarian Law prove the contrary, since article 27 of the Constitution recognized the legal personality of the *ejido* (collective lands) and *comunidades* and that Title VII, paragraph 2, deals with protection and the integrity of the lands of indigenous peoples.

In its paragraph 4, the aforementioned text sets forth that: "The law, as concerns the wishes of the members of an *ejido* of a community to adopt the most suitable conditions for the exploitation of the productive resources, will regulate the exercise of rights of members of the community over the land and the *ejidatario* over its part (…) and as concerns its *ejidatarios*, will regulate transmission of land rights to other members of the community. Likewise, it will set the conditions according to which the *ejido* assembly grants to each member influence concerning its parcel. In the case of transfer of parcels, the right of preference set forth in the law will be respected".

In conformity with the Agrarian Law (articles 64 and 107), the land of the *ejidos* and the communities which are set aside by the Assembly for Human Settlement are inalienable and non-transferrable since they are a part of the irreducible patrimony of the community. Lands for building are the property of their holders, whether these are *ejidos* or members of a community, as set forth in the Federal Law on Agrarian Reform of 1972 and previous agrarian codes (1934, 1940 and 1942). Lands for collective use, governed by one or the other form of social property are inalienable, non-transferable and non-attachable, except in cases where the communal Agrarian Assembly — the highest authority — decides to transfer when and as it sees fit to do, to civil or commercial enterprises (articles 74, 75, 99 and 100). Land subdivided in parcels within domains *(ejidos)* belong to their allocates, who exercise a right of maintenance, use and usufruct. The law states the procedure to follow in order to transfer these lands and the relevant rights (articles 76-86). In conformity with article 101 of the previously mentioned law, the communal form of ownership implies the individual status of the member, a status which gives the latter the use and possession of his parcel, and right of transfer to parents or next-of-kin. Article 56 of the Agrarian Law states that it is for the communal Agrarian Assembly, collective domains or communities to designate its zones of parcels for common use or for settlement. Concerning land for collective use, it is also up to the assemblies to define the rights of members, the rule being that these rights are presumed to be granted on the basis of equality, unless the Assembly decides to attribute the parcels proportionately, according to the financial contribution, the work and the financial resources of each individual. In keeping with the preceding, and in direct connection with the legal safeguards under the law, the Agrarian National Register delivers certificates attesting to the rights on land for collective use. These certificates state the name of the holder as well as his percentage of rights over the lands for collective use, as provided in the agreements of the assemblies. It should be mentioned that certificates confirming the rights on lands for collective use do not state a specific surface area for their holders, since land for collective use is worked collectively, for the benefit of the agrarian community as a legal person and the *ejidatarios* or members of the community in their assigned proportion. It should be noted that the rules concerning the use of collective land, as set forth in article 10 of the aforementioned law, must be specified in the by-laws or communal statute, according to whether it is a *ejido* or a community.

As regards the devolution, transfer or conveyance of rights, if the Agrarian Law authorizes the member of an *ejido* to transfer his rights over a parcel as provided in article 80, this right simply allows conveyance either to other *ejidatarios* or other members of the same community, it being understood that the spouse and children of the transferor exercise the same right. Likewise, the Agrarian Law sets forth in article 47 that no *ejidatario* can hold rights over parcels with a surface area greater than 5 per cent of the total land of the *ejido* or the equivalent of a small holding. In the case of coemption, the Secretariat of Agrarian Reform orders, after review, a member of an *ejido* to sell the excess within one year from notifica-

tion of the decision. As is the case with devolution of land, articles 81-86 of the Agrarian Law govern the procedure for full and complete accession to property. As regards communal property, under article 101, the Agrarian Law provides for the transfer of rights, this transfer being limited to parents or next of kin, but is not authorized for third parties outside the community. Any devolution of lands or accompanying rights which breach the Agrarian Law would be justifiable before the agrarian tribunals in such a manner that the Commissariat for Agrarian Questions has in this regard the prerogatives of the Public Minister and would represent the accusation in this context.

The sale of land is an historic phenomenon, which existed within the agrarian communities prior to the constitutional reform. It is necessary not to lose sight of the form which the conveyance of property or the use of property or land has taken. According to agrarian studies carried out on the *ejidos* by the Commissariat for Agrarian Questions in 1998, a third of the *ejidatarios* have an agreement for the use of their parcel which implies a transfer of the usufruct on the land in the form of tenant farming, an annuity or a loan. This signifies that the lands are worked by people other than their owners. Likewise, the survey showed that this type of practice has existed for many years and that they were only brought to light during the reform of article 27 of the Constitution. In fact, nearly one-third of the agricultural agreements pre-date the reform, 42 per cent have been drawn up since the start of the process in 1993 in collective property, and 26 per cent began when the Notarial Act was deposited and ended with the last harvest. According to this study, it can be seen that the forms according to which rural workers to whom the collective property belongs acquire these lands are determined by socio-economic and cultural conditions according to the large regions of the country, and they have been reinforced by the characteristics of the agrarian reform in each region.

(b) Concerning the working rights for mineral and forestry resources, it must be noted that article 27 of the Constitution, section VII, authorizes rural workers who belong to the community to join together with the State and third parties in authorizing the use of these lands.

Section VIII(b) of this constitutional provision declares void: "All concessions or sales of land, water or hills made by the Secretariats of State for Development and Finance or any other federal authority since 1 December 1876 to date, which enabled invasion or illegal occupation of collective lands, communal property, or other property belonging to inhabitants of villages, hamlets, congregations, or communities".

Likewise, the rural workers in villages of indigenous communities enjoy the right to work and manage forestry resources or those of protective natural zones by virtue of laws on forestry from 1997 and on ecological balance and environmental protection in 1996 in particular. The Government indicates that it is worried about the supervision of the application of these standards and procedures concerning the management of resources, the forms of participation, exploitation and administration as provided in the national legislation.

(c) Concerning consultations with indigenous representatives on constitutional reforms, as previously indicated to the Committee of Experts in the report sent in 1998, several drafts of constitutional reforms were submitted in March 1998 to Congress, with a view to recognizing indigenous rights. The impetus for the process of constitutional reform which recognizes the rights of indigenous peoples in the context of their cultural difference, began a little more than a decade ago in local Constitutions, in criminal codes and codes of procedure, regulatory laws, organic laws relating to judicial power, organic municipal laws and other texts in the federal and state framework.

(d) Independently of the information that the Government will provide in its next report, it should be noted that, concerning the abuse of indigenous migrant workers, the Government has held consultations with the responsible authorities and, when it has received this information, it will bring it before the Committee of Experts.

Concerning indigenous migrant workers, it should be noted that the Government has adopted the following measures in order to make known the labour rights applicable to indigenous communities:

— publication and distribution among the core indigenous population of a document entitled "Labour rights and obligations for rural workers";

— translation of information on labour rights in the different indigenous languages with the help of the INI;

— communication of information on labour rights by means of 18 radio broadcasts by the INI;

— creation and management of training scholarships and advice on commercialization of productive projects. In order to identify the needs concerning indigenous women workers, links were set up with programmes with the Secretariat of Labour, such as the programme for training of unemployed workers (PROBECAT), and the programme of qualification and integral modernization (CIMO), as well as the Council for Standardization and Certification (CONOCER);

— the training of government officials in charge of explaining labour rights of indigenous populations, such as rural teachers of the National Council of Educational Development (CONAFE). Likewise, measures have been taken with the Autonomous University of Chapingo to train social workers;

— the creation of a commission in charge of analysing the problems and determining the strategies for implementation of social security law. This commission includes organizations of employers, rural sector agricultural workers and the Federal Government through the Secretariat of State for Labour and Social Security and the Mexican Institute of Social Security;

— the promotion and defence of labour rights;

— the holding of seminars, including the "Seminar on Migrant Agricultural Workers" which was held in Los Angeles, California, in February 1999.

Moreover, in the field of safety and health, as well as conditions of work, the federal labour delegations of the Secretariat of State for Labour and Social Security have referred to a total of 4,237 inspections carried out in all the States of the Republic, in their monthly reports sent from January to September 1999.

Finally, concerning paragraph 5 of the observation, the Committee requests the Government to re-examine the measures taken to overcome the problems which indigenous people have had to face in the country. Throughout this commentary, the Government has indicated the mechanisms of permanent dialogue set up between it and the indigenous peoples at different levels. The mechanisms enable the description and the application of public policies, to find solutions to conflicts, and to meet the requests of the indigenous peoples. It is important to underline that these processes of change do not take place overnight. The Government will continue its efforts to improve the living conditions of indigenous peoples. As the Indigenous and Tribal Peoples Convention, 1989 (No. 169), sets forth in Article 2, with the participation of the indigenous population, Mexico has accepted to develop coordinated and systematic action with a view to protecting the rights of these people and guaranteeing the respect of their integrity. The Government indicates that it has demonstrated an openness in this regard at all levels. As an example, concerning the legislative power, it is appropriate to underline the plurality of parties present on committees in charge of indigenous peoples, both in the local Congress and in the federal Congress. The politico-social participation of indigenous people in Mexico has been gradually set up, particularly in the political, public administration, education, culture, health and social framework. Numerous measures have been taken to facilitate full, fair and equitable development of indigenous people, which have contributed to the improvement of their well-being and their standard of living. Progress and results in the policies and the measures taken by the Government of Mexico have taken place, and it should be underscored that these coincide with engagements resulting from the application of the Convention. The interaction between the Government of Mexico and the indigenous communities has been fruitful, open and responsible. This demonstrates that article 4 of the Constitution of Mexico is applied in this respect and ILO Convention No. 169 is incorporated in the national legislation. The Government will continue to work with the International Labour Organization in this regard.

In addition, before the Conference Committee, a Government representative stated that the observation of the Committee of Experts did not cast doubt on the compliance of the Government with the obligations it had assumed under the Convention. The Committee indicated that information on its comments should be provided by Mexico in its next report. The Government was already working on this report which would be submitted, as required, in 2001. For that purpose, it was holding consultations with all the institutions concerned with the situation of indigenous peoples. She reaffirmed the willingness of her Government to cooperate with the ILO.

The comments made by the Committee of Experts referred to the dialogue of the Mexican Government with indigenous communities and to three specific cases: the Huichol Indian Community, the indigenous communities in the Uxpanapa Valley and a general report on the situation of indigenous peoples in Mexico. She expressed surprise with regard to the comments of the Committee of Experts concerning the alleged expressions of concern by the Governing Body with regard to an "apparent lack of real dialogue between the Government and indigenous communities". She noted that the documents on the basis of which the Governing Body adopted its decisions on the cases to which the Committee of Ex-

perts referred did not contain such terms. There was permanent dialogue between the Mexican Government and its indigenous populations, which formed part of its public policies and was a characteristic of the country which had been in existence before its accession to Convention No. 169, the ratification of which marked the commitment of the Mexican State to its indigenous peoples.

In Mexico, 10 per cent of the population was indigenous. Most of them lived in rural areas in widely dispersed communities. Forty-five per cent of these communities consisted of fewer than 99 inhabitants and were located in mountainous or tropical areas, which made it difficult for them to have access to the basic social infrastructure of health, education and roads. A priority objective of the Mexican Government was to develop a new relationship between the State, society and indigenous peoples based on dialogue and respect for cultural and linguistic diversity, as set out in the National Development Plan, 1995-2000. This Plan set out the main lines of the current Government's social, political and economic development policy. It also provided for the integral participation of all social groups in the improvement of the living conditions of indigenous peoples with a view to preserving their cultural and social heritage and ensuring recognition of their individual and collective rights.

With regard to the issue of the legal recognition of the rights of indigenous populations, she indicated that Mexico had commenced in 1986 a process of legislative reform at the federal, state and municipal levels based on consultation and consensus with a view to the recognition of the rights of indigenous peoples. This process had been intensified during the 1990s and had led in the first place to the reform of article 4 of the Constitution in 1992. This article recognized the pluri-cultural composition of Mexico "with its origins in its indigenous peoples" and established that "the law shall protect and promote the development of their languages, cultures, usages, customs, resources and specific forms of social organization, and shall guarantee to their members effective access to the jurisdiction of the State". This had been followed by amendments at the federal level, including the Agrarian Act, the General Education Act, the General Act respecting ecological balance and the protection of the environment, the Forest Act and the Copyright Act. This legislative process had not been confined to the federal level. Up to this year, some 16 of the 31 states of the Republic had adapted their constitutions to incorporate the principles for the recognition of cultural plurality set out in article 4 of the Constitution. The Federal Code of Penal Procedure and a number of state penal codes had been amended to include provisions envisaging the consideration of the usages and customs of indigenous peoples as elements in their assessment and to guarantee the presence of translators during legal proceedings. Options were also being explored for the adoption of legislation at the municipal level with a view to ensuring that the reforms had a greater impact and achieved a substantial change in the relations between the federal, state and municipal authorities for the benefit of indigenous peoples.

Between 1995 and 1996, the national consultation had been held on indigenous rights and participation, with the broad representation of indigenous peoples. The Federal Executive had introduced a constitutional reform initiative in 1998 respecting indigenous rights and culture which recognized the right of indigenous peoples to free determination, in the sense of the autonomous capacity to take decisions on, among other matters, the manner in which they lived in common and organized themselves, the application of their legal systems, the election of their authorities and the preservation of their culture. It was the responsibility of the Congress to decide upon and discuss this and other initiatives. At the international level, indigenous Mexican legislators participated actively in the American Indian Parliament (PARLATINO) and the Inter-Parliamentary Union. She emphasized that it was the traditional priority of the Mexican Government to combat the social, economic and educational backwardness of indigenous peoples. The national programme to promote priority regions operated on a basis of dialogue between the federal, state and municipal governments and social and community organizations. This programme promoted integrated and sustainable processes of development in rural and indigenous regions affected by the highest levels of social exclusion through the management and redistribution of economic resources. The plan gave priority for immediate action to 35 regions, 22 of which contained 51 per cent of the indigenous population. During the course of 1999, the programme had channelled investments worth over $900 million. This year, the amount would be over $1,000 million. With regard to health care, between 1995 and 1999, coverage had been extended in the indigenous areas of 24 states through the provision of basic services which directly benefited 5 million indigenous persons. During the 1999-2000 school year, basic education had been provided to over 1 million indigenous children, who received school books free of charge in 36 indigenous languages, as well as school equipment and learning materials. During the same period, 129 editions of books in indigenous languages had been reprinted with a circulation of 1 million copies. The programme of regional Indian funds of the National Indian Institute was promoting local and regional development through production projects developed by indigenous organizations of rural producers. The management, administration, technical follow-up and evaluation of these projects was also the responsibility of the above organizations. Over the past five years, this programme had covered 23 states, benefiting 11,583 organizations with 1.5 million indigenous members.

The Government representative reaffirmed that the access to justice and the promotion and defence of the human rights of indigenous peoples was also a priority of her Government, to which great efforts and resources were assigned. The National Human Rights Commission had established in 1998 a general support unit to address the demands and needs of indigenous peoples. The Secretariat of the Government, the Office of the Attorney-General of the Republic, the Federal Public Legal Institute and the National Indian Institute had signed an agreement to coordinate their activities and resources with a view to ensuring that indigenous persons who were the victims of crimes at the federal level had access under the best possible conditions to the jurisdiction of the State. Since 1995, a programme had been in operation to promote concerted agreements respecting access to justice, through which the National Indian Institute provided financing to indigenous organizations and communities and to non-indigenous organizations which worked in Indian regions with a view to promoting self-management in areas such as legal defence, guidance, training and the dissemination of information on rights. Through this programme, technical and financial support had been provided to almost 1,000 indigenous civil and community organizations.

She also referred to the civil registration programme, the objectives of which were to bring the civil registration services closer to indigenous persons; to train community promoters to facilitate the delivery of birth, marriage and death certificates and reduce administrative requirements for the indigenous population. This programme was particularly important in the case of migrant indigenous persons. Among the many activities undertaken to disseminate information on indigenous rights, the Mexican Government, through the Labour Secretariat, the National Human Rights Commission and the National Indian Institute had issued publications and analyses of indigenous rights, including information to promote the provisions of Convention No. 169. In 1999 alone, over 1,000 radio programmes had been broadcast in 954 towns in indigenous areas.

Land was the fundamental basis of indigenous and rural culture and undoubtedly constituted a fundamental issue for the peoples and the Government. Since the first decade of the twentieth century, the Mexican revolutionary heritage had recognized that land belonged to whomsoever worked it. It could therefore be claimed that the first agrarian policy in Mexico had also been indigenous. Through the distribution of agricultural land, thousands of groups of rural workers had been provided with land for the upkeep of their families. At the present time, there were 27,460 *ejidos* (collective lands) and 2,400 *comunidades*. Over 50 per cent of the national territory was therefore under social ownership, which left less than half for private property, national lands and agricultural and stock-raising farms. The *ejidos* and *comunidades* in Mexico were two forms of land ownership which were characterized by their legal personality and inheritance rights. Indigenous peoples owned land under all the forms of ownership recognized by the Mexican Constitution. After 85 uninterrupted years of agrarian policies, the Government continued to endeavour to achieve the effective delivery of agrarian justice. Agrarian tribunals had been established in 1992 and enjoyed autonomy, full jurisdiction and were obliged to take into consideration the language, usages and customs of indigenous persons in their proceedings and to ensure the presence of a translator for anyone who required one. In 1999, the agrarian tribunals examined 30,664 cases of disputes concerning land holdings in *ejidos* and *comunidades* by indigenous populations. A satisfactory solution was found in 82 per cent of these cases. The Agrarian Legal Office, which had been set up in the same year, was the body responsible for the defence, representation and provision of free legal advice to holders of *ejidos* and *comunidades*, workers in *ejidos* and *comunidades*, daily agricultural workers and private landowners. The Agrarian Legal Office worked with the National Agrarian Registry to provide security of title for the ownership of rural lands. With a view to ensuring legal security to the rights and lands in *ejidos* and *comunidades*, a programme had also been established for the certification of the rights to *ejidos* and the titularization of unused land. The programme was a product of the reform of article 27 of the Constitution in 1992. The objective of the programme was to regularize rights of workers in *ejidos* and *comunidades* and to delimit lands within agrarian zones. Government agencies which were involved in agrarian issues, and particularly the assemblies of workers in *ejidos* and *comunidades*, which were the highest bodies in

agrarian zones, participated in the application of the programme. The above assemblies decided upon the time, the manner and the periods over which the certification and titularization process of their lands and rights would be carried out.

The Government representative indicated that public policies could not be carried out without the participation of indigenous peoples and that Mexico was therefore envisaging mechanisms of dialogue for their design and implementation. The representation of indigenous peoples was guaranteed through their participation in all political parties and in the federal and state legislative assemblies. For example, 40 per cent of the deputies were indigenous in Oaxaca, 16 per cent in Quintana Roo, 15 per cent in the Federal District and 10 per cent in Chiapas and Tabasco. This trend for wider representation was also being extended to the municipal level. Indigenous affairs commissions, composed of the various political parties, existed in 56 per cent of the states of the Republic, including those with the highest proportions of indigenous peoples. The Congress of the Union also had a Commission on Indigenous Affairs.

She then referred to a number of the points set out in the observation of the Committee of Experts. Reference was made in paragraph 2 to the land rights of the Huichol Indian Community in San Andrés Cohamiata, Mezquitic Municipality, Jalisco. She recalled in this respect that Mexico had already provided the ILO with information on the occasion of a representation alleging non-compliance with Convention No. 169. According to the representation, the authorities had not returned to the Huichol community in San Andrés Cohamiata lands which had historically been in their possession, and particularly the area of the Huichol group of Tierra Blanca, the ownership of which had been recognized to another agrarian area in Nayarit. As the Committee of Experts was already aware, the Huichol of Tierra Blanca obtained a protection order under the terms of which the decision of the Unitary Agrarian Tribunal of Tepic, Nayarit, was overturned. In complying with the protection order, the case was currently at the stage of the presentation of evidence before the same Tribunal. Information on the outcome would be provided in the next report in 2001. In this respect, she emphasized that due attention had been paid to the Huichol people and existing judicial bodies had been used. She also indicated that the Jalicense support association for indigenous groups had represented and defended the persons concerned. This social organization undertook managerial, advisory, training and defence activities in agrarian matters and human rights in the Huichol region in the states of Jalisco and Nayarit. Over a period of five years, it had received from the National Indian Institute technical and financial support amounting to around $100,000 within the context of the programme promoting concerted agreements for access to justice.

She noted that paragraph 3 of the observation of the Committee of Experts referred to a representation concerning the land rights of Chinantecos indigenous persons relocated in the Uxpanapa Valley in Veracruz. She stated that, in the same way as with other indigenous peoples, through its everyday work the Government was strengthening channels of communication with Chinantecos indigenous persons relocated in the Uxpanapa Valley. The National Indian Institute had supported the establishment and financed social organizations, such as the Committee for the Defence of Chinanteco-Zoque-Totonaco Indigenous Rights and the Uxpanapa Indian Council. These were organizations which protected the rights of communities and promoted their economic and social development. The Uxpanapa Valley Regional Indian Fund also supported the process of organizing the communities and promoting their regional development. The National Indian Institute had participated in the establishment of the Uxpanapa Municipality in 1996. Through the Regional Fund, it was currently channelling significant resources to the region for public works, nutrition projects and social and economic development. At the end of 1999, the National Indian Institute held diagnostic and planning workshops for infrastructure, the results which made it possible to obtain support for the opening of roads and the implementation of various agricultural projects. She added that in the next few weeks a regional fund would be established for Chinanteca to promote training and development activities in the area with a gender perspective.

With regard to paragraph 4 of the observation, she stated that the right to land was enjoyed by all Mexicans. The Mexican Constitution established three forms of land ownership: national, private and social. The lands of indigenous peoples could be owned under any of these forms of ownership. The report of the Committee of Experts had referred to the claims made by the Authentic Workers' Front (FAT), which had erroneously alleged that the agrarian reform of 1992 had had the effect of making indigenous lands alienable, seizable and prescriptible. She denied that this was the case and stated that the Mexican Constitution recognized the legal personality of communities on *ejidos* and *comunidades* and protected their ownership of the land, both in terms of human settlement and productive activities. It also protected the integrity of the lands of indigenous groups. The Agrarian Act provided that the assemblies of agrarian areas were the entities which determined the possibility of alienating their lands or their rights. In this way, the workers on *ejidos* were the ones who had the exclusive competence to decide upon the alienation of their rights and lands. With regard to communal ownership, the Agrarian Act permitted the cession of rights to communal land, but provided that it could only be to the benefit of family members and neighbours of the community. This meant that the cession of rights was not permitted for the benefit of third parties unrelated to the community. She emphasized that any dispute in this respect could be taken to the agrarian tribunals.

Turning to the issue of rights to the exploitation of mineral and forest resources, she stated that article 27 of the Constitution allowed workers in *ejidos* and *comunidade*s to establish associations among themselves with the State and with third parties, as well as to grant the right to use and benefit from their lands. Similarly, the protection of the resources and the participation of indigenous peoples and communities in activities related to the exploitation, management and administration of forest resources and resources in protected natural areas were set out in the Forest Act, 1997, and the Act of 1996 respecting ecological equilibrium and environmental protection, among other legislation. The Government supervised the application of rules respecting the type and management of resources, forms of participation, exploitation and administration set out in the law.

With reference to consultations with indigenous representatives concerning constitutional reforms, she stated that the Government had already reported that constitutional reform initiatives had been submitted to the Congress of the Union in March 1998 for obtaining the recognition of indigenous rights.

With regard to the dissemination of information on the rights of indigenous migrant workers, the Government of Mexico was publishing and distributing documents such as the volume entitled "Labour rights and duties of agricultural workers". Within the framework of programmes of grants for vocational training, integrated skills and the modernization and certification of vocational skills, a service had been established to guide and manage the award of grants for training and guidance in commerce and productive projects, and for the training of community resource persons for the dissemination of the labour rights of indigenous workers. A commission had also been established to examine the problem and establish strategies to promote their right to social security.

She referred to paragraph 5 of the observation, in which the Government was requested to re-examine the measures it was taking in regard to the problems encountered by indigenous peoples in the country. In this respect, she recalled that many channels of dialogue existed in Mexico between the Government, indigenous peoples and society. One of the major changes of the past decade had been the development of public policies which focused on indigenous peoples as the agents of their own development and promoted their cultural and linguistic diversity. All public policies respecting indigenous peoples therefore included dialogue mechanisms for their design and implementation. Indigenous peoples also enjoyed high levels of representation in the Federal Congress and in local Congress. These were real and effective institutions of dialogue. In accordance with Article 2 of the Convention, the Government was taking responsibility, with the participation of its indigenous peoples, for the development of coordinated and systematic action to protect their rights and ensure respect for their identity. For her country, compliance with the terms of article 4 of the Constitution also implied compliance with Convention No. 169. She emphasized the amply demonstrated will of the Government to cooperate with the ILO, particularly for the application of Convention No. 169. The Government compiled its reports on the basis of broad consultation processes. It dealt with complaints relating to specific cases and carried out cooperative activities such as the "seminar on the inspection of working conditions in the rural sector", held in May 1999.

All the efforts which had been described above indicated the series of coordinated government processes and activities which formed the historical, everyday and permanent work in relation to indigenous peoples, communities and organizations at the various levels through many institutions. These processes required time and evaluation. The task was not easy, but awareness was high that in order to carry through legislative action and programmes it was necessary to maintain the political will and the co-responsibility of the various actors in order to continue achieving the consensus needed to promote the participation of indigenous persons in the future of the country. This was a democratic and ongoing exercise which touched on social, cultural, political and legal matters involving the citizens of Mexico.

The Worker members noted with interest the oral and written information provided by the Government of Mexico. As the written information submitted was voluminous and was received at a late stage, they proposed to defer the examination of this document to the Committee of Experts. They underscored that this case had

been suggested by the Workers' group and it demonstrated their effort to balance attention given by the Committee on the Application of Standards to basic human rights cases and other difficult cases. They were somewhat concerned by the possible inference that could be drawn from the statement by the Government representative, Director of the National Indian Institute, that this case did not reflect serious problems. With reference to the Government's query as to the basis for the Committee of Experts' conclusions, he recalled, in particular, paragraph 45(a) of the November 1999 report of the tripartite committee set up to examine a representation under article 24 (GB.276/16/3, November 1999). They emphasized that, in their conclusions, the Committee of Experts had expressed serious concerns by the apparent lack of dialogue between the Government and the indigenous peoples. Another main point was the information submitted by the Authentic Workers' Front (FAT) which was still under scrutiny by the Committee of Experts. They expressed concern over the fact that the Government did not seem to attach sufficient importance to the grievances and dissatisfaction voiced by the indigenous peoples. While they acknowledged and had taken note of the efforts the Government had reported taking, they maintained that the Government had not deployed sufficient efforts, in particular towards establishing the appropriate climate of consultation. They further noted, with interest, that this case had been brought to the ILO by trade unions. However, neither one of the larger employers' and workers' organizations in Mexico seemed to have taken any interest in this case as their views had not been made known to the Committee of Experts so far. In this context, the Worker members quoted from paragraph 70 of the General Report of the Committee of Experts in which the Committee emphasized the importance it attached to the contribution by employers' and workers' organizations to the task of the supervisory bodies. They further considered it relevant to note that member States who ratified a Convention should be able to implement their obligations forthwith. A ratification could not only be seen as a declaration of good intentions. They concluded by expressing support for the proposal by the Committee of Experts that the Government request technical assistance from the International Labour Office (paragraph 5 of the observation by the Committee of Experts). Such assistance could represent a good starting point for a dialogue to seek a solution to the serious problems this case reflected. They underscored the importance of a broad representation in such a dialogue including, inter alia, the small trade unions who brought this case to the attention of the ILO and genuine representatives for the indigenous peoples concerned.

The Employer members recalled that this Committee had previously discussed the case of Mexico in 1995. At that time, information of serious problems involving Chiapas had been received from organizations representing indigenous communities and from the National Indian Institute. Noting that the Committee was now examining different issues, the Employer members thanked the Government representative for supplying a detailed report on the issues raised. The Committee of Experts had included four points in its observation, but had not provided sufficient detail. Accordingly, this Committee could not evaluate the issues in depth. With regard to the issue of the land rights of the Huichol community, the Employer members noted the Government's indication that a judicial appeal *(amparo)* was being pursued and that the indigenous peoples' rights had been recognized in that case. Noting that special agrarian courts existed in Mexico to address such land rights issues and resolve disputes, the Employer members considered that this special court system offered an effective form of assistance. Turning to another issue of land rights concerning the Uxpanapa Valley indigenous communities, who had been displaced following the construction of a dam, the Employer members noted that this problem was longstanding. Noting that the situation had not been resolved, the Employer members indicated that a real dialogue between the Government and the indigenous community might be necessary, as suggested by the Committee of Experts. Regarding the Government's conclusion of agreements with multinational enterprises allowing exploitation of mineral and forestry resources on indigenous lands, the Employer members noted that the Committee could only hold an interim discussion on this point, as insufficient information had been supplied.

The Employer members noted that the two representations brought before the Governing Body had led to the adoption of conclusions and recommendations suggesting that the Government engage in dialogue with the indigenous communities to resolve issues in accordance with the consultative spirit on which the Convention was based. Noting that consultation appeared to be the main issue of this case and was stressed in the closing paragraphs of the Committee of Experts' comments, the Employer members pointed out that, according to the Director of the National Indian Institute, the institute's main activity was in fact to develop and establish such a dialogue with the indigenous communities. The Committee should therefore express its hope that the necessary measures would be developed and expedited so that tangible problems could be resolved. The Employer members requested the Government to provide detailed information on the issues raised by the Committee of Experts.

The Employer member of Mexico expressed full support for the report presented by the Government representative. He said that Mexican employers witnessed and were protagonists in the efforts made by the Government to maintain social dialogue and promote investment in the most isolated regions of the country, in which indigenous peoples predominated, with a view to ensuring their economic and social integration with the rest of the population. For this purpose, the development of private initiative was being promoted in these areas through fiscal incentives and many types of facilities to encourage the installation of industry. In this way, employment and the recruitment of local inhabitants was being encouraged. Nevertheless, he warned that the subject covered by the Convention lent itself to all types of rhetoric and manipulation by interests which were completely unrelated to the issue. It was no surprise that so-called workers' organizations, with a view to gaining notoriety, claimed to submit complaints concerning disputes of which they had no knowledge. It would be very different if the ethnic groups concerned had submitted a complaint setting out in detail the matter which was of concern to them. He emphasized that in Mexico the fundamental rights of indigenous peoples were recognized and respected and that they were considered to be an important part of the population. He added that employers were interested in developing sources of employment in the most isolated parts of the country. He stated that the Convention was fully applied in a context of dialogue, with the participation of the various social partners. Finally, he expressed the view that the additional report requested by the Committee of Experts from the Government would be sufficient to respond to the points raised by the Conference Committee.

The Worker member of Mexico indicated that the Confederation of Mexican Workers, like the National Peasants' Confederation and the Indigenous Council, had taken part alongside the Government in the legislative reform process through discussions and dialogue with various legislative bodies at the federal, state and local levels. At the state level it had been decided to draft community laws. He pointed out that more than half of Mexico's states had amended their constitutions to respect the principles of the Convention. It was important to observe that workers, peasants and indigenous peoples belonged to the Union Congress, whose decisions were taken jointly. The fact that Mexico had more than 100 distinct indigenous groups within its borders, each with its own language and customs, posed a serious problem. Those communities were open to interference from the outside not only by groups seeking to safeguard human rights but also from every sort of religious sect taking advantage of the situation to pursue its own interests. Peace and order could only be maintained under such circumstances in the context of respect for the law. Otherwise, the situation would degenerate into a large-scale conflict which, understandably, no one wanted. To conclude, the Worker member stated that a dialogue was under way and the problems were being addressed slowly, but productively.

The Worker member of Brazil indicated that he was speaking out of solidarity for the Mexican people and because there was also a high number of indigenous peoples in his country. He welcomed the statement by the Government representative. He stated that it was important to examine whether the activities and policies which had been described were in conformity with the Convention. He recalled the importance of one of the basic objectives of the Convention, namely that indigenous peoples should participate in the development of the policies applicable to them and should be consulted through appropriate procedures. In this respect, he shared the concern of the Committee of Experts with regard to the development of Mexican public policies which did not respect this principle. He emphasized that consultation required institutionalized mechanisms which were freely accessible to all organizations. Another aspect referred to in previous years by the Committee of Experts had been the legal and constitutional reforms which could have the effect of negating or restricting the legal scope of the provisions of the Convention. In that regard, he recalled that a country that ratified a Convention undertook to give it full effect in national law and could not therefore introduce reforms which undermined its application. With regard to Articles 8 to 12 of the Convention, he recalled that in previous years the Committee of Experts had expressed concern at the large number of indigenous persons who were in prison in the State of Oaxaca without having been found guilty. With regard to Articles 13 to 19 of the Convention, it had requested information from the Government concerning whether the ownership and possession of the land was guaranteed for indigenous communities. In respect of Article 20 of the Convention, which dealt with the recruitment and conditions of employment of indigenous peoples, it had noted that it was regrettable that wage discrimination still existed and needed to be eliminated. Finally, he

reaffirmed that an essential element of the Convention consisted of the holding of consultations with representative organizations. He added that where there was no certainty of being able to work with independent trade unions, it could not be said that the Convention was being applied.

Another Government representative, with reference to the intervention by the Worker members, said that there had perhaps been a misunderstanding when the other Government representative, in her statement had referred to the observation of the Committee of Experts which indicated that concern had been "expressed by the Governing Body over an apparent lack of real dialogue between the Government and the indigenous communities". She had stated that the above statement did not come from the documents prepared for the Governing Body and that it was certainly an error on the part of the Committee of Experts. While the Committee of Experts had indeed expressed concern at the lack of dialogue, this was an unjustified concern since, as had been mentioned, there were numerous channels of dialogue. In contrast with the views expressed by the Worker members he denied his Government was minimizing the problem and emphasized that it was aware that the indigenous people had been exploited and that it was endeavouring to resolve the heritage of 500 years. For this purpose, the Constitution had been amended, new programmes had been implemented and funds and policies developed in favour of this underprivileged category of the population. It was not the intention of the Government to ignore this situation nor to remain inactive. It was not possible to expect that the poverty which existed in his country, and particularly in indigenous populations, could be resolved in the short term. The situation was a phenomenon of underdevelopment and efforts were being made to resolve it. He affirmed that Mexico had not ratified the Convention prematurely, as stated by the Worker members. When it had done so, all the provisions of the Convention had been covered in national legislation. Finally, he emphasized that none of the supervisory bodies of the ILO had stated that Mexico had violated the Convention.

Another Government representative emphasized that no attempt was being made by her Government to minimize the issue of indigenous peoples, which constituted an important problem in respect of which gradual progress was being made towards achieving results. She did not agree with the view expressed by the Worker members that the measures taken for the benefit of indigenous peoples could be described as completed. These were issues of justice and development, and it was never possible to consider that a task had been completed. If that was so, the ILO would not exist. With regard to the question of consultations, she indicated that they were not only common practice in her country, but also constituted an obligation for Mexican public servants. All policies and activities were organized and undertaken in consultation with the various indigenous communities. In response to the question raised by the Worker member of Brazil on land ownership, she cited part of article 27 of the Constitution under the terms of which "the legal personality of population units shall be recognized and their ownership of the land shall be protected. The integrity of the lands of indigenous groups shall be protected". She emphasized that indigenous persons were not only entitled to own land and to the protection of their ownership, but also to recognition of the legal personality of their communities. She added that the National Indian Institute and the Social Development Secretariat were national consultative bodies which contributed to the dialogue on self-development projects, technical assistance and human rights, among other matters. A new body had recently been created with the participation of 50 representatives of 35 indigenous regions and in which 17 different languages were spoken. These were examples of institutionalized and pluri-cultural consultation bodies.

The Worker members expressed their full appreciation of the difficulties caused by the level of poverty in Mexico referred to by the Government representative. They disagreed, however, with the inference that poverty was or could be seen as the basic explanation for the problems at issue. Although they agreed that it was essential to obtain further information on this case, and that technical assistance from the ILO usefully could contribute thereto, they reiterated that one of the main problems in this case was the apparent lack of dialogue with the indigenous peoples concerned.

The Employer members noted the statement by the Government representative that numerous measures had been taken in order to resolve the problems encountered with respect to indigenous and tribal peoples. To this effect, an amendment to the Constitution, amendments of legislation and other measures had taken place. However, the Committee was not in a position to determine whether these measures were sufficient to protect the rights of indigenous and tribal peoples. This was also due to the particular character of the Convention which provided for complex measures to be taken by a ratifying State. Therefore, this discussion had rather an interim character which nevertheless was valuable as it should encourage the Government to take prompt action, and contributed to creating a greater awareness of the problems of indigenous and tribal peoples. In conclusion, they stated that the Government should provide additional information in a report.

The Committee noted the detailed written and oral information supplied by the Government representatives, and the discussion which took place. The information provided indicated that the Government was taking active measures to address the questions raised by the Committee of Experts, but that continuing efforts were still required. It noted with concern that the Governing Body, in its conclusions on two representations under article 24 of the Constitution, had evoked problems in carrying out effective consultations between the Government and representatives of indigenous peoples. Similar questions had been raised in comments by workers' organizations, as had continuing allegations of labour abuses practised against rural indigenous workers and questions concerning the land rights of indigenous peoples. The Committee urged the Government to continue to provide detailed information on measures to the Committee of Experts to resolve the numerous questions raised by the Committee of Experts concerning the application of the Convention, with the technical assistance of the Office, if necessary.

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

Saint Lucia (ratification: 1980)

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

Afghanistan (ratification: 1969)

The Worker members recalled that, according to the usual working methods the case of a country, the Government of which had not responded to the invitation of the Conference Committee, was examined on the last day of the discussion of individual cases. The objective was not to examine the substance of these cases, given the impossibility of having a discussion with the governments concerned, but to underline in the Conference Report the importance of the issues raised and the necessary measures for the re-establishment of dialogue. The report would mention for each country the case in question.

The Worker members observed that the Committee of Experts had been drawing the attention of this Committee since 1997 to the reports which had been sent to it by various sources concerning the serious problems of gender discrimination which were culminating in the violation of Convention No. 111 by the Government of Afghanistan. The Worker members expressed once again their regret and their grave concern at not having been able to discuss this situation with the Government and which merited the undivided attention of this Committee. It was regrettable that the efforts undertaken by the ILO had not succeeded up to now. The ILO and the whole international community should take their responsibilities with greater conviction and force and increase their pressure on the Government of Afghanistan.

Regarding the application of Convention No. 98 by Saint Lucia, the Worker members recalled that this case had been included on the list because of the existence of violations of the right to collective bargaining and anti-union discrimination, actions against which there was no protection. For the last nine years, the Government of Saint Lucia had not sent a single report on the application of this Convention. It appeared, however, from the written information communicated by the Goverenment that the latter had transmitted a copy of an act respecting the registration, status and recognition of workers' and employers' organizations. The Committee of Experts should examine this law and its application in practice.

The Employer members regretted that some countries had not appeared before the Committee, despite being requested to do so in relation to the application of ratified Conventions. In this regard, they referred specifically to Afghanistan and Saint Lucia, noting that this was not the first time that they had failed to appear. These countries had been placed on the list of individual cases due to the Committee of Experts' concerns regarding their non-application of ratified Conventions. The Employer members considered this failure to appear as negative behaviour towards this Committee and the ILO as a whole. It was one of the worst forms of deliberate obstruction of the work of the supervisory machinery. The Employer members deplored this lack of cooperation in relation to the Committee of Experts and the entire Organization.

The Worker members, so that the report of the Committee should reflect this point, declared that they were certain that the Committee would also once again wish to request the Director-General to invite the Chairman of the Committee of Experts to attend next year's general discussion as an observer.

C. REPORTS ON RATIFIED CONVENTIONS (STATES MEMBERS)

(Article 22 of the Constitution)

Reports received as of 15 June 2000

The table published in the Report of the Committee of Experts, page 452, should be brought up to date in the following manner:

Note: First reports are indicated in parenthesis. Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Antigua and Barbuda — **11 reports requested**

– 6 reports received: Conventions Nos. 17, 29, 81, 87, 111, 138
– 5 reports not received: Conventions Nos. 11, 12, 98, 105, 108

Barbados — **17 reports requested**

– 16 reports received: Conventions Nos. 5, 7, 11, 12, 17, 42, 63, 81, 98, 105, 108, 111, 118, 122, 144, (172)
– 1 report not received: Convention No. 19

Belize — **14 reports requested**

(Paragraph 93)

– 13 reports received: Conventions Nos. 5, 8, 11, 12, 29, 42, 81, 87, 88, 89, 98, 99, 108
– 1 report not received: Convention No. 105

Benin — **7 reports requested**

(Paragraph 93)

– 4 reports received: Conventions Nos. 11, 41, 105, 111
– 3 reports not received: Conventions Nos. 18, 85, 98

Bolivia — **17 reports requested**

(Paragraph 89)

– 13 reports received: Conventions Nos. 81, 87, 89, 98, 103, 105, 111, 121, 128, 131, (138), (159), 162
– 4 reports not received: Conventions Nos. 102, 117, 122, 160

Cape Verde — **8 reports requested**

(Paragraph 93)

– 7 reports received: Conventions Nos. 17, 29, 81, 98, 100, 105, 118
– 1 report not received: Convention No. 111

Costa Rica — **15 reports requested**

– All reports received: Conventions Nos. 11, 81, 89, 98, 105, 111, 127, 130, 141, 144, 147, 148, 150, 159, 169

Côte d'Ivoire — **9 reports requested**

– 8 reports received: Conventions Nos. 11, 41, 81, 98, 100, 105, 111, 144
– 1 report not received: Convention No. 18

Cyprus — **24 reports requested**

– 23 reports received: Conventions Nos. 11, 44, 58, 81, 89, 98, 105, 111, 121, 122, (138), 144, (147), 150, 151, 154, 155, 158, 159, 160, 171, (172)
– 1 report not received: Convention No. (175)

Czech Republic — **16 reports requested**

– 14 reports received: Conventions Nos. 11, 12, 17, 42, 98, 102, 105, 111, 128, 155, 159, 160, 161, 171
– 2 reports not received: Conventions Nos. 89, 148

Denmark — **21 reports requested**

– 19 reports received: Conventions Nos. 11, 12, 27, 42, 81, 88, 98, 105, 111, 130, (138), 144, 149, 150, 151, 155, 159, 160, (169)
– 2 reports not received: Conventions Nos. 142, 148

El Salvador — **12 reports requested**

– All reports received: Conventions Nos. 12, 77, 78, 81, 99, 105, 111, 131, 141, 144, 159, 160

Ethiopia — **8 reports requested**

(Paragraph 93)

– 6 reports received: Conventions Nos. 87, 98, 111, 155, 158, 159
– 2 reports not received: Conventions Nos. 11, 156

Ghana — **26 reports requested**

– 20 reports received: Conventions Nos. 8, 11, 22, 29, 30, 45, 58, 69, 74, 81, 87, 88, 89, 94, 98, 103, 105, 108, 117, 148
– 6 reports not received: Conventions Nos. 92, 100, 111, 149, 150, 151

Grenada — **18 reports requested**

(Paragraph 93)

– 13 reports received: Conventions Nos. 5, 8, 10, 11, 12, 16, 29, 58, 81, (87), 98, 105, (144)
– 5 reports not received: Conventions Nos. 19, 26, 99, (100), 108

Guinea — **23 reports requested**

(Paragraph 93)

– 10 reports received: Conventions Nos. 29, 81, 87, 98, 100, 105, 117, 136, 142, 148
– 13 reports not received: Conventions Nos. 5, 11, 45, 89, 111, 121, 122, 144, 149, 150, 151, 156, 159

Guinea-Bissau — **24 reports requested**

– 9 reports received: Conventions Nos. 12, 29, 81, 88, 89, 98, 100, 105, 111
– 15 reports not received: Conventions Nos. 1, 7, 17, 18, 19, 26, 27, 45, 68, 69, 73, 74, 91, 92, 108

Iraq **26 reports requested**

– 25 reports received: Conventions Nos. 8, 16, 17, 27, 29, 42, 81, 88, 89, 98, 100, 105, 111, 136, 137, 138, 142, 144, 147, 148, 149, 150, 152, 153, 167
– 1 report not received: Convention No. 11

Israel **6 reports requested**

– All reports received: Conventions Nos. 81, 98, 105, 111, (147), 150

Jamaica **8 reports requested**

(Paragraph 89)

– 3 reports received: Conventions Nos. 81, 105, (144)
– 5 reports not received: Conventions Nos. 11, 98, 111, 149, 150

Lesotho **2 reports requested**

– All reports received: Conventions Nos. 11, 98

Libyan Arab Jamahiriya **22 reports requested**

– 18 reports received: Conventions Nos. 1, 29, 52, 53, 81, 88, 95, 100, 102, 103, 105, 111, 118, 121, 122, 128, 130, 138
– 4 reports not received: Conventions Nos. 14, 89, 96, 98

Madagascar **18 reports requested**

– 16 reports received: Conventions Nos. 5, 11, 12, 26, 29, 41, 81, 87, 100, 111, 117, 119, 120, 122, 127, 129
– 2 reports not received: Conventions Nos. 118, (144)

Mali **17 reports requested**

(Paragraph 89)

– 12 reports received: Conventions Nos. 26, 29, 81, 87, 98, 100, 105, 111, (135), (141), (151), (159)
– 5 reports not received: Conventions Nos. 5, 11, 17, 18, 41

Malta **31 reports requested**

(Paragraph 93)

– 30 reports received: Conventions Nos. 1, 2, 8, 11, 12, 16, 19, 29, 32, 42, 45, 81, 87, 88, 96, 98, 100, 105, 108, 111, 119, 127, 129, 131, 135, 136, 141, 148, 149, 159
– 1 report not received: Convention No. 117

Niger **18 reports requested**

(Paragraph 93)

– All reports received: Conventions Nos. 11, 18, 41, 81, 87, 98, 105, 111, 117, 119, 131, 135, 138, 142, 148, 154, 156, 158

Saint Lucia **21 reports requested**

(Paragraph 82)

– 1 report received: Convention No. 98
– 20 reports not received: Conventions Nos. 5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 87, 94, 95, 97, 100, 101, 105, 108, 111

San Marino **13 reports requested**

– 12 reports received: Conventions Nos. 98, 105, 138, 144, 148, 150, 151, 154, 156, 159, 160, 161
– 1 report not received: Convention No. 111

Slovakia **16 reports requested**

– 8 reports received: Conventions Nos. 11, 42, (105), 111, 130, (138), (144), 161
– 8 reports not received: Conventions Nos. 12, 17, 89, 98, 148, 155, 159, 160

Slovenia **17 reports requested**

(Paragraph 93)

– All reports received: Conventions Nos. 11, 12, 81, 89, 98, 100, (105), 111, 121, 122, 148, 155, 156, 158, 159, 161, 162

South Africa **7 reports requested**

– All reports received: Conventions Nos. (29), 42, 63, 89, 98, (105), (111)

Sri Lanka **12 reports requested**

– All reports received: Conventions Nos. 5, 11, 18, 81, 96, 98, 100, 103, 108, 135, 144, 160

Sweden **25 reports requested**

(Paragraph 93)

– All reports received: Conventions Nos. 11, 12, 81, 98, 105, 111, 121, 144, 147, 148, 149, 150, 151, 154, 155, 156, 157, 158, 159, 160, 161, 162, 164, 174, (176)

Syrian Arab Republic **12 reports requested**

– All reports received: Conventions Nos. 11, 17, 18, 19, 63, 81, 89, 98, 105, 111, 118, 144

Tajikistan **23 reports requested**

– 18 reports received: Conventions Nos. 27, 29, 45, 47, 87, 92, 98, 100, 103, 108, 111, 122, 126, 133, 142, 147, 159, 160
– 5 reports not received: Conventions Nos. 11, 119, 120, 148, 149

United Republic of Tanzania **16 reports requested**

– 8 reports received: Conventions Nos. 29, 59, 98, 105, 131, 134, 142, 144
– 8 reports not received: Conventions Nos. 11, 12, 17, 63, 84, 137, 148, 149

Trinidad and Tobago **6 reports requested**

– 2 reports received: Conventions Nos. (100), 144
– 4 reports not received: Conventions Nos. 85, 98, 105, 111

Uruguay **22 reports requested**

(Paragraph 93)

– All reports received: Conventions Nos. 11, 63, 81, 95, 98, 105, 111, 120, 121, 131, 144, 148, 149, 150, 151, 154, 155, 156, 159, 161, 162, 172

Zambia **19 reports requested**

– 17 reports received: Conventions Nos. 11, 12, 17, 18, 29, 89, 98, 105, 111, 144, 148, 149, 150, 151, 154, 158, 159
– 2 reports not received: Conventions Nos. 95, 122

Grand Total

A total of 2,288 reports were requested, of which 1,641 reports (71.72 per cent) were received.

D. STATISTICAL TABLE OF REPORTS ON RATIFIED CONVENTIONS AS OF 15 JUNE 2000

(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	
		Number	Percentage	Number	Percentage	Number	Percentage
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
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 four-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

II. OBSERVATIONS AND INFORMATION CONCERNING THE APPLICATION OF CONVENTIONS IN NON-METROPOLITAN TERRITORIES (ARTICLES 22 AND 35 OF THE CONSTITUTION)

A. Information concerning Certain Territories

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

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

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

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

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[1] The list of the reports received is to be found in Part II B of the Report.

B. REPORTS ON RATIFIED CONVENTIONS (NON-METROPOLITAN TERRITORIES)

(Articles 22 and 35 of the Constitution)

Reports received as of 15 June 2000

The table published in the Report of the Committee of Experts, page 489, should be brought up to date in the following manner:

Note: Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Denmark — **2 reports received: 18 requested**

Greenland — **3 reports requested**

– 2 reports received: Conventions Nos. 5, 105
– 1 report not received: Convention No. 11

France — **109 reports received: 197 requested**

French Guiana — **26 reports requested**

– 5 reports received: Conventions Nos. 8, 12, 98, 108, 111
– 21 reports not received: Conventions Nos. 5, 17, 27, 29, 35, 36, 37, 38, 42, 45, 81, 87, 89, 100, 105, 129, 136, 142, 144, 147, 149

Guadeloupe — **38 reports requested**

(Paragraph 93)

– 17 report received: Conventions Nos. 8, 12, 35, 36, 37, 38, 42, 92, 98, 100, 108, 111, 129, 131, 142, 146, 149
– 21 reports not received: Conventions Nos. 3, 5, 11, 17, 27, 29, 45, 58, 81, 87, 89, 105, 112, 120, 126, 133, 135, 136, 141, 144, 147

Martinique — **34 reports requested**

(Paragraph 93)

– 6 report received: Conventions Nos. 8, 12, 98, 108, 111, 146
– 28 reports not received: Conventions Nos. 5, 11, 17, 27, 29, 35, 36, 37, 38, 42, 45, 58, 81, 87, 89, 92, 100, 105, 112, 123, 126, 129, 133, 136, 142, 144, 147, 149

St. Pierre and Miquelon — **28 reports requested**

– 18 reports received: Conventions Nos. 5, 12, 29, 35, 44, 45, 82, 87, 88, 96, 98, 100, 108, 111, 122, 129, 142, 147
– 10 reports not received: Conventions Nos. 11, 17, 42, 63, 81, 89, 105, 131, 144, 149

Netherlands — **18 reports received: 36 requested**

Netherlands Antilles — **7 reports requested**

– All reports received: Conventions Nos. 11, 12, 17, 42, 81, 89, 105

United Kingdom — **All reports received: 82 requested**

Gibraltar — **11 reports requested**

– All reports received: Conventions Nos. 11, 12, 17, 42, 59, 81, 98, 105, 150, 151, 160

Grand Total

A total of 362 reports were requested, of which 240 reports (66.30 per cent) were received.

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

Observations and Information

(a) Failure to submit instruments of the competent authorities

The Worker members recalled that the obligation to submit instruments to the competent authorities was a fundamental element of the standards system of the ILO. As the Committee had emphasized during the discussion of its General Survey, fulfilment of this obligation provided a basis for strengthening linkages between the ILO and national authorities, promoting the ratification of Conventions and stimulating tripartite dialogue at the national level. In its report, the Committee of Experts had specified the nature and modalities of this obligation and had insisted on the fact that submission to the competent authorities did not imply that governments had the obligation to propose the ratification of the Conventions under consideration. The Worker members also expressed concern over the considerable delay which had been accumulated by certain member States and the difficulties which were likely to arise in the process of making up this delay. The Committee should urge governments to respect this obligation and should have reminded them that they could request the technical assistance of the ILO.

The Employer members associated themselves with the statement made by the Worker members. They referred in particular to the exposé of the Committee of Experts on the nature of the obligation to submit. This did not imply any obligation to propose the ratification of Conventions and Protocols. Moreover, they recalled that this section of the report only enumerated countries which had not provided any information that the instruments adopted by the Conference during its last seven sessions had in fact been submitted to the competent authorities. They believed that there might be some countries which had not submitted instruments for more than seven years, but which were not mentioned due to an interruption in their failure to submit instruments to the competent authorities. Finally, they observed that Seychelles was among the countries mentioned in the report for failure to submit, even though it had been the first State to ratify Convention No. 182. Noting this contradiction, they pointed out that the obligation to submit instruments to the competent authorities was in practice fairly easy to fulfil and that the countries concerned should make every effort to comply with this obligation.

A Government representative of Belize apologized for not having submitted the instruments adopted at the last seven sessions of the Conference to the competent authorities. This had been due to administrative and logistical difficulties. However, he pledged to comply with the reporting requirements in the near future. He added that his country had made progress in fulfilling its obligations, such as the submission of the reports under article 22 of the Constitution and supplying replies to the comments of the Committee of Experts.

A Government representative of Cambodia recalled that between 1970 and 1994 his country had experienced a period of war and national reconstruction following the period of the Khmer Rouge regime, during which Cambodia's relationship with the ILO had been suspended. Because of that situation, it had not been possible to submit any of the instruments adopted from the 55th to the 81st Sessions of the Conference to the competent authorities. However, in 1999 Cambodia had ratified Conventions Nos. 138 and 150. The Conventions adopted from 1995 to 1997 had been submitted to the Council of Ministers for consideration, as reported to the ILO. Regrettably, the Council of Ministers had not yet submitted those instruments to the National Assembly or the Senate. With regard to the maritime instruments, he noted that current Cambodian labour law did not cover maritime workers. The Ministry of Labour had therefore requested the Ministry of Transport to examine all instruments relating to maritime issues with a view to their submission to the Council of Ministers. So far, the Ministry of Transport had not done so. He emphasized that his country had never neglected to discharge its obligations under articles 19 and 22 of the Constitution. With the exception of Convention No. 182, all the fundamental Conventions had been ratified. He reaffirmed his Government's commitment to discharge its obligations in this respect as soon as possible. However, ILO technical assistance was required, particularly on legal issues and to raise the awareness of the responsible officials.

A Government representative of Cameroon replied to the observations of the Committee of Experts regarding the failure to submit certain Conventions and Recommendations to the competent authorities. In general, the submission of instruments did not raise any problems. However, his Government had launched a project for the redrafting of the entire body of legislative and regulatory provisions in order to integrate the principles contained in ILO standards. The Government of Cameroon should be able to fulfil its obligations within a reasonable period. It remained committed to its engagements towards the ILO and concerned to respect the Conventions which it had ratified. He admitted that the submission of instruments to the competent authorities did not necessarily involve the ratification of Conventions. He also expressed the hope that his country would benefit from ILO technical assistance in this field and welcomed the appointment of a standards specialist in the multidisciplinary advisory team in Yaoundé, which would certainly lead to the accomplishment of considerable progress.

A Government representative of Guinea-Bissau informed the Committee that Conventions Nos. 122, 138 and 144 had been sent to the Council of Ministers for discussion and analysis. Convention No. 87 had been examined by the Council of Ministers and subsequently approved by the People's National Assembly. Ratification by the President had not been possible due to the political and military conflict in the country between June 1998 and May 1999. In 1999, despite the efforts made, it had not been possible to complete ratification as a result of the holding of democratic elections and the greater priority of establishing a new government. He highlighted the difficulty of having to translate the documents and, in this connection, expressed his gratitude for the collaboration provided by the Ministry of Solidarity and Labour of Portugal. He stated that his country was committed to endeavouring to fulfil its obligations.

The representative of the Secretary-General provided a summary of a letter from the Permanent Representative of the Republic of Haiti to the United Nations, in which he requested the Committee to excuse the absence of a Government representative; this was due to the fact that Haiti did not have registered delegates. The Government of Haiti intended to immediately launch the process of submission to the competent authorities and of supplying reports on the unratified Conventions and Recommendations. In order to do so, it would request the technical assistance of the ILO.

A Government representative of Honduras stated that his Government, through the Ministry of Labour and Social Security, had established a technical team to analyse and study Conventions and Recommendations with a view to sending them to Congress for their examination and subsequent ratification. Regarding the failure to submit instruments to the competent authorities, he said that his Government had begun a process of study and analysis with a view to fulfilling its obligations. In this connection, he requested the technical assistance of the ILO.

A Government representative of Mali stated that his Government wished to reaffirm its commitment to the goals and principles of the ILO and was particularly eager to comply with its constitutional obligations. Since the last session of the Conference, and with the technical assistance of a standards specialist of the Dakar multidisciplinary advisory team, all the measures had been taken for the submission of the instruments in question to the competent authorities. The Labour Department had recently informed the ILO of the steps which had been taken for the submission of the instruments which had been adopted at the 79th, 80th and 81st Sessions of the Conference to the competent authorities. The Government

of Mali undertook to make every effort to submit other instruments as soon as possible. He hoped that his country would continue to benefit from the technical cooperation of the ILO, especially in the field of training those in charge of standards issues. Finally, he informed the Committee that the instruments which had been adopted at the 87th Session of the Conference had been submitted to the National Assembly with a view to their ratification.

A Government representative of Sao Tome and Principe referred to his previous statement and emphasized the need for assistance in technical, legal and linguistic training in order to fulfil his country's obligations to the ILO. He stated that although his country was poor and was passing through a situation that was difficult in various ways, it was aware of its obligations and intended to respect them.

A Government representative of Senegal admitted that Senegal was behind in submitting the instruments adopted from the 79th to the 85th Sessions of the Conference. This was an exceptional situation. This was the first time since it had become a Member of the ILO in 1960 that Senegal had been called upon to supply information to the Committee on the Application of Standards as a result of a failure to submit. Senegal was deeply committed to the aims and objectives of the ILO and had always considered it a point of honour to fulfil all of its constitutional obligations and to give full effect to all ratified Conventions. To date, Senegal had ratified 36 Conventions, including the eight fundamental Conventions. The failures noted were therefore not a result of any bad intentions or inattentiveness by the Government. They were a result of a certain rigidity in the interaction between the executive and the legislature and above all structural and organizational weaknesses within the Ministry of Labour. In spite of its failure to submit the instruments adopted since 1992, the Government had ratified three Conventions over the two preceding years. He recognized that while the Government had not submitted these instruments to Parliament, this was due to a lack of vigilance and follow-up of the instruments for submission on the part of the Ministry of Labour, which was confronted with a series of organizational, material and human problems. This situation had caused the Government in 1998 to seek the assistance of the ILO with a view to reinforcing the capacity of the Ministry. The ILO Office in Dakar had recently organized a subregional seminar on standards with the participation of four representatives of the Ministry of Labour. Since then, the Government had sought to make good the delays incurred in relation to submission. At present, all the files for submission had been prepared and were on the verge of being transmitted to the President of the Republic, who had the sole competence to submit them to Parliament. He expressed regret at the situation, but relied on the understanding and indulgence of the Committee while his Government sought to complete the reforms it had embarked upon.

A Government representative of the Seychelles recalled that his country had made significant progress since becoming a Member of the ILO in fulfilling its reporting obligations. He reported that, with the ratification of Convention No. 138, his country had now joined the ranks of those which had ratified all eight fundamental Conventions. With regard to the obligation to submit instruments adopted by the Conference to the competent authorities, he explained that, as a very small island State with very limited human resources, his country had only a limited capacity to fulfil all of its obligations within the specified period. The difficulties were compounded by the limited numbers of qualified personnel. He said that his country would seek the assistance of the ILO to help it meet its obligations to submit international labour standards to the competent authorities and reaffirmed that it would do its best to honour all of its obligations under the ILO Constitution.

A Government representative of Sierra Leone reported that Conventions Nos. 138, 151 and 182 had been submitted to Parliament for ratification. However, he stated that assistance would be required from the ILO to overcome the delays experienced in the submission of reports to the supervisory bodies. Practical difficulties occurred in obtaining sufficient copies of the instruments for the submission process. The ILO should therefore provide more copies of the instruments it adopted. He also called for further technical assistance in relation to the submission of instruments to the competent authorities.

A Government representative of the Syrian Arab Republic referred to the action taken by his Government and the continued dialogue with the Council of Ministers concerning the need to submit instruments adopted by the Conference to the People's Assembly. The tripartite partners were consulted concerning recommendations for the ratification of Conventions. However, the ratification process had been delayed pending amendment of the national legislation. Under article 71 of the Constitution of the Syrian Arab Republic and section 70 of the Statute of the People's Assembly, it was the People's Assembly which was the competent authority for ratification of international labour standards. On 17 May 2000, at a meeting between the Minister of Social and Labour Affairs, the Office of the Prime Minister and other partners, it had been agreed that the outstanding instruments would be submitted to the People's Assembly by the President. The instruments adopted by the Conference over the past seven years had therefore been submitted to the People's Assembly by the President on 28 May. This action confirmed his country's commitment to fulfil its obligations under the ILO Constitution and its agreement to submit all instruments adopted by the Conference to the People's Assembly after due examination by all the relevant authorities.

A Government representative of Yemen informed the Committee that the instruments adopted by the Conference could only be submitted to the People's Assembly by means of a Bill of Ratification. The difficulty therefore arose that Conventions which were not being recommended for ratification could not be submitted to the legal authorities. Advice had been sought from the ILO with a view to overcoming this problem, which had given rise to the delay in submitting international labour standards to the competent authorities.

The Worker members noted that this procedure could not create problems in a democracy. It was obvious that the ILO's instruments had to be submitted to the competent authorities, which usually meant the Parliament. They expressed the hope that the situation would improve in this regard.

The Employer members endorsed the statement made by the Worker members. They noted that, of the various explanations provided by the Government representatives concerned, none led to the conclusion that the countries concerned were bound to fail in their obligation to submit instruments to the competent authorities. They recalled that only those countries had been mentioned which had failed to comply with the obligation of submission in respect of the last seven sessions of the Conference. Problems which arose only occasionally could not therefore cause the failure to comply with the constitutional obligations referred to by the Experts. In conclusion, they hoped that the countries concerned would make every effort in future to comply with their constitutional obligation to submit the instruments adopted by the Conference to the competent authorities.

The Committee noted the information supplied and explanations given by the Government representatives and by other speakers who took the floor. It also noted the specific difficulties encountered in complying with this obligation, mentioned by various speakers. Lastly, it took due note of the commitments made by several Government representatives to comply with their constitutional obligation to submit Conventions and Recommendations to the competent authorities in the shortest possible time. The Committee expressed the firm hope that the countries mentioned, namely, Afghanistan, Belize, Cambodia, Cameroon, Central African Republic, Comoros, Congo, Guinea-Bissau, Haiti, Honduras, Kyrgyzstan, Mali, Saint Lucia, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic and Yemen would, in the near future, send reports containing information relating to the submission of Conventions and Recommendations to the competent authorities. Delays and failures to submit and the increase in the number of such cases were of great concern to the Committee because these were obligations emanating from the Constitution and were essential to the effectiveness of standard-setting activities. In this connection, the Committee reiterated that the ILO could provide technical assistance to help comply with this obligation. The Committee decided to mention all these cases in the appropriate section of its General Report.

(b) Information received

Benin. The Government has indicated that the instruments adopted by the Conference at its 78th, 79th, 80th, 82nd, 83rd, 84th and 85th Session have been submitted to the National Assembly by Decree No. 98-570 of 18 November 1998.

Papua New Guinea. The Government reported that, on 12 April 2000, notice was brought in Parliament of the texts of the seven international labour Conventions that the National Executive Council approved for ratification and of the instruments adopted from the 66th to the 87th Sessions of the International Labour Conference.

Swaziland. The Government reported that the instruments adopted by the Conference at its 78th, 79th, 80th, 81st, 82nd and 83rd Sessions were submitted to Parliament on 18 October 1999.

IV. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

(Article 19 of the Constitution)

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

The Worker members thanked the Government representatives for the information that they had provided to the Committee. However, they stressed that the failures to submit noted were not caused by chance, since the same failures had occurred over the past five years. The statements had not supplied many new details regarding these failures. The Committee should urge governments to respect fully this obligation deriving from the Constitution of the ILO, to enable the Committee of Experts to prepare complete General Surveys.

The Employer members fully agreed with the remarks made by the Worker members. They pointed out that according to the General Report, it appeared that only 52 per cent of the reports requested had been received. They recalled that these reports provided very important information and questioned why governments would be reluctant to send such reports; they could not face criticism, since they had not ratified the Conventions. They emphasized that if a large number of reports were received they provided a more realistic picture. They considered that the failure to submit such reports was serious and should be mentioned in the report of the Committee of Experts.

A Government representative of Algeria recalled that his Government had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), in 1993. It had submitted the first report on the application of this Convention in 1997 and a second report in 1999. Algeria had also fulfilled its obligations by submitting several other reports in response to requests from the ILO. It was true, however, that some of these reports had been submitted after the last meeting of the Committee of Experts. Furthermore, the procedure for the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), had been commenced. Algeria had made every effort to honour its obligations towards the ILO, particularly in previous years. The failures noted by the Committee of Experts were rather embarrassing for his Government, as they did not reflect the efforts it had made. The situation would be examined in order to determine the causes of these failures. Algeria attached the greatest importance to rigorous compliance with its international obligations and would endeavour to ensure that this uncomfortable and regrettable situation did not recur in the future.

A Government representative of Bosnia and Herzegovina noted that the clarifications which she had provided also applied to the question under discussion.

A Government representative of Burundi stated that for the last five years his Government had not been able to produce any reports on the unratified Conventions because of the crisis that the country had been experiencing since 1993 and the embargo which had been imposed on it from 1996 to 1999. Another constraint was related to the shortage of skills in the country and the absence of a standards specialist in the multidisciplinary advisory team in Yaoundé. The situation would certainly improve as a result of the recent appointment of a standards specialist and the participation of a representative from Burundi in the annual training course on international labour standards which had just taken place. He expressed the hope that his Government would fulfil its obligations in this field before the next session of the Conference. He also requested that a technical assistance mission be sent to Burundi in order to help make up the delay quickly and provide training for the officials of the labour administration and the social partners at the local level.

A Government representative of Georgia stressed that his country was making every effort to respect its international obligations, but that his Government was currently going through a process of reorganization. He indicated that the officials dealing with these reports did not have the necessary skills and mentioned that working groups had to be created in this respect. He hoped that these working groups could receive technical assistance from the ILO.

A Government representative of Liberia indicated that in the past two years his country had tried to submit the requested reports and had made great efforts to reply to all the observations formulated by the Committee of Experts. The Ministry of Labour had asked for technical assistance from the ILO multidisciplinary advisory team in Dakar and as soon as they came to Liberia, the reports would be supplied.

A Government representative of the Libyan Arab Jamahiriya indicated that a large number of instruments had been submitted to the competent authorities of his country for ratification. In this regard, he enumerated several Conventions and pointed out that the Worst Forms of Child Labour Convention, 1999 (No. 182), had been submitted to the competent authorities in 1999. He stressed that, due to the great number of Conventions, his country needed to devote more time and effort to this process, but that it would be done gradually. He emphasized that his country always took into account the observations made by the Committee of Experts.

A Government representative of Malawi indicated that there were several reasons why his country had failed to submit the reports required under article 19. Firstly, his country had emerged from a dictatorial regime which had no democratic structures for tripartite cooperation and social dialogue. A tripartite labour advisory council had been established in September 1998 and it was largely involved in the ratification of fundamental Conventions. Secondly, the Ministry of Labour had lost most of the officials trained in the preparation of reports on the ILO Conventions through retirement and resignations, and it was proving difficult to replace them without proper training. Thirdly, due to the number and frequency at which ILO Conventions and Recommendations were being produced, it was difficult to submit regular reports on unratified Conventions and Recommendations, since his country put most of its efforts into reporting on ratified instruments. Finally, he indicated that his country had not received a positive answer when it requested technical assistance from the ILO multidisciplinary advisory teams in South Africa and Zimbabwe. He looked forward to complying with the demands of the Committee in the future, provided the ILO helped with the necessary training, as requested.

A Government representative of Nigeria indicated that the statement he had made earlier applied equally here.

A Government representative of Rwanda stated that his Government had prepared and submitted all the reports requested, and that he would deposit at the ILO copies of all the reports that had been drawn up. It seemed, however, as though the communications between his country and the ILO had been disturbed recently. He further remarked that the request for submission of reports on non-ratified Conventions had been received rather late and that his Government had been able to transmit its report on 3 May 2000. He therefore hoped that, in the future, requests would be received at an earlier date to enable the Government to react in time.

The Worker members recalled that under article 19 of the Constitution member States had to report on unratified Conventions and Recommendations. These reports served as the basis for the drafting of the General Surveys and provided an overview of the obstacles to ratification facing member States. The reports also made it possible to evaluate the manner in which Conventions were applied in the countries which had not yet ratified them. Twenty-three member States had not fulfilled this obligation compared with 17 last year. The Worker members renewed their call to the governments concerned to comply with their obligations under article 19 of the Constitution.

The Employer members once again fully endorsed the statement made by the Worker members. They noted that many requests had been made for ILO technical assistance in order to train

government civil servants responsible for supplying the reports. In this regard, they expressed their concern that the ILO should invest most of its resources in normal training activities and not in training government bureaucrats.

The Committee noted the information and explanations supplied by Government representatives and other speakers. The Committee emphasized the importance it attached to the constitutional obligation to send reports on unratified Conventions and on Recommendations. In fact, these reports made possible a better evaluation of the situation within the context of the General Surveys of the Committee of Experts. The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Afghanistan, Algeria, Armenia, Bosnia and Herzegovina, Burundi, Comoros, Djibouti, Equatorial Guinea, Fiji, Georgia, Grenada, Haiti, Liberia, Libyan Arab Jamahiriya, Malawi, Republic of Moldova, Nigeria, Rwanda, Saint Lucia, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia and Turkmenistan would fulfil their obligations under article 19 of the Constitution of the ILO in the future. The Committee decided to mention these cases in the appropriate section of its General Report.

(b) Reports received on unratified Convention No. 144 and on Recommendation No. 152 as of 15 June 2000

In addition to the reports listed in Appendix E on page 99 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries:

Antigua and Barbuda, Ethiopia and Ghana.

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT

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