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.